Supreme Court, U.S.
FILED

No. 09-1384 MAY 11 2010

OFFICE OF THE CLERK

In the Supreme Court of the United States

CONNIE BURNS WATKINS,
RICHARD WATKINS,
Petitioners,

v.

CITY OF PARAGOULD, ARKANSAS, et al.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Connie Watkins
Richard Watkins
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Petitioners pro se

May 11, 2010

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

1. Whether, upon a timely challenge to jurisdiction and party status, when plaintiff parties joined by Rule 19 attempt removal of a case from state court to federal court with claims of third-party status, based only on federal questions arising in a fifth amended counterclaim, the District Court can exercise jurisdiction without first aligning parties and establishing basis of federal question and not be in conflict with removal statutes and long held precedent decision by this Court.

2. If so, whether a case can be removed when, considering the above situation, almost a year after the initial complaint by Plaintiff, there was no attempt by plaintiff to remove when a 2007 counterclaim by Petitioners/Defendants first raised federal questions, and no attempt at removal upon the 2008 filing of the fourth amended counterclaim full of triable federal issues, but only when a fifth counterclaim was filed that joined parties, some of the joined plaintiff parties removed, though the original Plaintiff did not join the removal.

3. Whether an attorney for local government plaintiff parties can fail to make an appearance in District Court, file no notice to remove, make no motions on behalf of any party, yet enter first appearance in the United States Court of Appeals for the Eighth Circuit and claim an interest or standing for plaintiff parties who did not join in removal to federal court?

4. Whether the District Court and the Eighth Circuit Court of Appeals are to be shelters where local government actors can, without removal rights, avoid

facing constitutional claims resulting from their own intentional malicious actions.

5. Whether the District Court can strike, and the Eighth Circuit can dismiss Petitioners' appeal, when the Watkins have legally cognizable interest in the dismissed claims which are inextricably intertwined with contested ordinance violation charges untried, but pending, at mid-point of continuance in municipal court, and a conviction on appeal to the Arkansas Court of Appeals and Supreme Court, involving only Mrs. Watkins, where in the event of future favorable judgments, the possibility of either of the Watkins seeking damages is nullified by the summary judgment or dismissal.

6. Whether the District Court can strike an entire Fifth Amended Counterclaim wrongly removed from state court and the Eighth Circuit Court dismiss Petitioners' appeal, all upon the mere suggestions by plaintiff parties, supplemented into federal court by an author who made no appearance, in the face of evidence attached to the well founded, long existing, untried claims contained in the Fifth Amended Counterclaim, and when three Counterdefendants did not join in removal, but did file answers in state court only.

7. Whether the U.S. District Court can disregard Fed. R. Civ. P. 56 on summary judgment and strike the non-moving party's unadjudicated claims in a substitution for a trial on the merits, determine conclusively against that party, when the record shows claims have been pled with specificity and are supported by substantial material evidence and meet all required elements in claims and when the non-

moving party has demanded a trial in state and federal court, and when the non-moving party is the only party shown by the record to have produced uncontroverted evidence.

8. Are the petitioners entitled to protection of the Fifth Amendment right not to be deprived of liberty and property without due process?

9. Whether the dissolving of the petitioners' established 150 prima facie claims contained in the Fifth Amended Counterclaim, with legally cognizable interest, without their having had an opportunity to be heard, produce witnesses, or present evidence on any issue in any court (municipal and circuit), abrogated the fundamental requirement of due process and violated their Constitutional rights.

10. Whether the Court of Appeals for the Eighth Circuit in dismissing the petitioner's case was wrong and whether this Court will reverse and restore Petitioners' genuine claims to be heard in state court in accordance with sound decisions previously made.

11. Whether the petitioners should be informed on the findings of fact, as requested, concerning the dismissal of federal issues that were securely in state court, with state court issues, under the Supremacy Clause and the rules and law that allowed the Court to speculate that Petitioners' claims could not be proven when the opposite has been shown in state and in federal court records even without a trial on any issue.

PARTIES TO THE PROCEEDINGS BELOW*

Plaintiff - Appellee below:

City of Paragould, Arkansas

Third Party Plaintiffs - Appellants below:

Connie Burns Watkins; Richard Watkins

Third Party Defendants - Appellees below:

Mike Gaskill, individually and in his official capacity as Mayor of Paragould; J. D. Stephenson, individually and in his official capacity as Chief of Police of the Paragould Police Department; Todd Stovall, individually and in his official capacity as Captain with the Paragould Police Department; Monty Martin, individually and in his official capacity as Lieutenant at the Paragould Police Department; Mike Tinnin, individually and in his official capacity as a Police Officer with the Paragould Police Department; Jaree Johnson, in her official capacity as a Police Officer with the

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* The only parties named by Attorney Robert L. Beard in the removal were: Mike Gaskill, J.D. Stephenson, Todd Stovall, Monty Martin, Mike Tinnin, Jaree Johnson, Philip Faulkner, Dennis Dunn, Kimberly Dale, and Allen Warmath, all in their individual capacities. (Doc. No. 1) There were no signatures by the individuals and no other person or entity of the 24 counterdefendants served with the Fifth Amended Counterclaim attempted removal. (See Doc. No. 1) and (PLWC attorney to state court Judge - App. U, 144a) Also, there are no third-party plaintiffs or third-party defendants in this case. Plaintiff parties are all Counterclaim Defendants.

Paragould Police Department; Phillip Faulkner, individually and in his official capacity as a Captain with the Paragould Police Department; Dennis Dunn, individually and in his official capacity as the City Inspector of Paragould; Randy F. Philhours, individually and in his official capacity as City Attorney; Kimberly B. Dale, individually and in her official capacity as Assistant City Attorney and Greene County Deputy Prosecutor; Allen Warmath, individually and in his official capacity as City Attorney for Paragould; Paragould Light & Water Commission, (PLWC) as an entity; Bill Fisher, individually and in his official capacity as CEO of PLWC; Darrell Phillips, individually and in his official capacity as Chief Operations of PLWC; William (Bill) McCartney, individually and in his official capacity with PLWC; Frank Curtis, individually and in his official capacity with PLWC; John White, individually and in his official capacity with PLWC; Larry Bobbit, individually and as a representative of PLWC; Daniel Wilkerson, individually and as a representative of PLWC; Don Wallace, individually and as a representative of PLWC; Crafton Tree Service, (CTS) as an entity and agent for PLWC; Frank Crafton, individually and in his official capacity as President of Crafton Tree Service; Jake Crafton, individually and in his official capacity as operations manager of Crafton Tree Service and agent for PLWC; Bradley P. Hancock, individually and as owner of Bradley P. Hancock Surveying and Mapping and as a representative of PLWC

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PETITION FOR A WRIT OF CERTIORARI

Richard Watkins and Connie Watkins respectfully Petition for a writ of certiorari to review the opinions and judgments of the U.S. Court of Appeals for the Eighth Circuit and the United States District Court Eastern District of Arkansas Jonesboro Division.

OPINIONS BELOW

The opinions below are contained in the Appendices to this Petition. The Petitioners are unaware of any of the opinions having been reported or published. The judgment of the U.S. Court of Appeals for the Eighth Circuit was entered on December 14, 2009 (App. A, 1a), the orders of The United States District Court Eastern District of Arkansas Jonesboro Division were entered on November 24, 2009 (App. B, 4a), November 6, 2009 (App. C, 6a) and October 26, 2009 (App. D, 8a), and the orders denying the motion for rehearing was entered on February 11, 2010 (App. E, 11a) and February 10, 2010 (App F, 13a).

JURISDICTION

The judgment of the U.S. Court of Appeals for the Eighth Circuit sought to be reviewed was entered on December 14, 2009 (App. A, 1a), the orders of The United States District Court Eastern District of Arkansas Jonesboro Division sought to be reviewed were entered on November 24, 2009 (App. B, 4a), November 6, 2009 (App. C, 6a) and October 26, 2009 (App. D, 8a), and the orders denying the motion for rehearing was entered on February 11, 2010 (App. E, 11a) and February 10, 2010 (App F, 13a). This petition is timely under 28 U.S.C. § 2101(c) and Supreme Court

Rule 13.1 and Rule 13.3, because it is being filed within 90 days of the entry of the order denying rehearing en banc. This Court has jurisdiction to review the judgment of the U.S. Court of Appeals for the Eighth Circuit and the orders of the United States District Court Eastern District of Arkansas pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions involved are: 28 U.S.C. § 1441, 1446 & 1447.

Relevant parts of 28 U.S.C. § 1441(a) and (b) provide:

> (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.
>
> (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.

28 U.S.C. § 1446 in pertinent part provides:

> (a) A defendant or defendants desiring to remove any civil action or criminal prosecution

from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

28 U.S.C. §1447(c), pertinent parts provides:

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after

the filing of the notice of removal under section 1446 (a).

STATEMENT OF THE CASE

I. Background Facts and Issues

The original Plaintiff was City of Paragould, Arkansas Acting By and Through the Paragould Light and Water Commission (PLWC). The initial complaint was filed by Plaintiff (Respondent) in State Court in 2006. There was no federal question in the initial complaint. (True copy - Doc. No. 42)

The initial complaint asking for an injunction against the Petitioner Watkins on their own property was filed after the PLWC and the City of Paragould, Arkansas had intentionally acted to violate the Watkins' constitutional rights and immunities including denying due process, false arrest and false imprisonment, loss of property rights, property damage and other damage in harassing retaliation for Petitioner Mrs. Watkins' exercise of first amendment rights to criticize PLWC's prior damage to her property. (22a-28a)

The Watkins, first represented by an attorney, timely filed a counterclaim which included claims for civil rights offenses. Amended counterclaims were filed by the attorney. Watkins, pro se, filed their Fourth Amended Counterclaim in 2008 which raised additional federal issues ripening from ongoing violations of rights by city officials. The Watkins pled with the specificity required.

Plaintiff government parties continued intentional violations in 2009 against the Watkins' First Amendment, due process, business and contract rights and malicious actions against property, personal rights and civil rights (32a-40a). On September 8, 2009, Plaintiff attorneys Robert Beard and Donis Hamilton filed a petition in state court, renewing an attempt to get summary judgment on different grounds. The Watkins responded, showing that Plaintiff had no rights for judgment on Watkins claims.

Petitioners filed their Fifth Amended Counterclaim in state court on September 18, 2009 which added claims against Respondents for new damaging actions and newly discovered acts against rights, including fraud, secret false arrests, malicious prosecution, and other First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendment violations and Civil Rights violations for the very purpose of interfering with the Watkins' First Amendment rights (40a-48a). All claims were made with detailed specificity and supporting evidence was attached to the Fifth Amended Counterclaim. (Doc. No. 1)

Due to continuances sought by Respondent and the fact that many of the issues are inherently tied to Petitioner Mrs. Watkins' case on appeal in the Arkansas Court of Appeals (CACR 08 01285) since October 2008, there has been no trial on the merits of any issue in this case. Uncertified partial summary judgment on some issues still on appeal was granted prematurely in circuit court, while additional charges against Mrs. Watkins for her husband's exercise of free speech were pending in municipal court (App. V, 146a) and (33a-38a), but valid substantiated claims that have withstood Respondents' motions for summary

judgment were existing in state court against many counterdefendants (Respondents) at the time of removal.

With their Fifth Amended Counterclaim, the Watkins joined, according to Rule 19 (15a-21a), as necessary parties, twenty-two principle actors whose violations against the Watkins' human and civil rights had been described in Watkins' December 22, 2006 answer to Respondents' initial complaint, the Watkins' original November 20, 2007 Counterclaim, Watkins' answers to Plaintiff's second set of interrogatories and request for production of documents (Doc. No. 41), and Watkins' 2008 Fourth Amended Counterclaim. Claims against the actions of three city prosecutors were new in the Fifth Amended Counterclaim, having just become known or ripe AFTER the March 4, 2009 partial summary judgment on issues connected to the false arrest and conviction that was on appeal. (Doc.No.1) (31a-41a) and see (App. V, 146a)

II. Removal to District Court

After that joinder to the Fifth Amended Counterclaim, the attorney for ten of twenty-four plaintiff actors filed for removal to Federal Court, calling the plaintiff parties 'defendants' and 'third-party defendants' and calling the true defendants 'plaintiff' and 'third party plaintiffs'. (Doc. No. 1) and (iv) Even the original true Plaintiff, PLWC, 'became a Third-Party Defendant'. The District Court adopted the false status of parties. (App.B, 4a)

The notice of removal submitted to the U.S. District Court Eastern District of Arkansas Jonesboro Division (District Court) included the caption of the case as it

had been in state court with the filing of the Fifth Counterclaim, therefore twenty-five Counterdefendants (though Don Wallace was dropped by the Watkins) were listed as 'removed' parties by the District Court and the Court of Appeals for the Eight Circuit. The District Court docket (1-48) shows that there was no order from the Court to join all 24 parties Counterdefendants to a removal to federal court.

The ten removing plaintiff parties who were removed by Municipal League Attorney Robert L. Beard, asserted accordance with 28 U.S.C. §§ 1331, 1441 and 1446, and claimed original federal question jurisdiction based on the true defendants Watkins' claims (counterclaim- fifth amended) under 42 U.S.C. § 1983, 1985, 1986 and 1988. (Doc. No. 1) The Notice of Removal stated that a true copy of the original complaint record was included (Id.), but a critical page ten was deliberately 'spliced to exclude' facts linked to the criminal prosecution of Mrs. Watkins. (App. Q & R)

The original plaintiff entities, City of Paragould and PLWC did not join in the removal to federal court. Also not joining were Crafton Tree Service (CTS) and eleven individuals, including seven employees of PLWC, two employees of CTS, and the surveyor, Brad Hancock, who had taken actions against the Watkins and their property on behalf of PLWC. (23a-25a) (28a-30a)

A letter from PLWC attorney to the state court trial assistant demonstrates that Mr. Hamilton was not part of the removal process, and that a trial date, though premature for appeal issues, had been set in state court on the merits of issues in Petitioners' case. (App. U-144a)

Fourteen plaintiff parties did not join in the removal. Yet, one of those, surveyor Bradley Hancock, filed an answer to the Fifth Amended Counterclaim in District Court. (Doc.No.11) Other non-removing parties' are seven PLWC employees, and entity City of Paragould. Non-removing entity PLWC never filed a document in District Court, nor were any of its motions supplied to District Court. Jake Crafton, Frank Crafton and entity CTS, having not removed, filed their answer to the Fifth Amended Counterclaim only in state court and filed as they had been joined-Defendants on Counterclaim.

The petitioners made timely challenges to removal, (Doc. No. 13) (App. H), objected to Respondent's attempts to change party status (Id.), objected to jurisdictional basis claimed by removers (Id.), filed a motion for review of Plaintiffs' representations (Id.) and filed a motion to remand. (Doc. No. 15) (App. J)

The petitioners responded to Respondents' answers and motions to strike the Fifth Amended Counterclaim that were filed in state court before and after removal, and to motions filed by the ten parties who had been 'removed' by the only attorney who filed a removal notice and to parties who had not attempted removal. Petitioners' responses in all instances were sufficient to overcome motions to dismiss according to Fed. R. Civ. P. 56, by addressing specific actions of each Counterdefendant listed, immunity claims and also thoroughly exposing the purposeful manipulation by plaintiff parties of the 'third party Rule. (Doc. Nos. 8, 9 & 14) (App. I)

III. Orders and Motions in District Court

A. October 26, 2009 – ORDER (Doc. No. 27) (App. D)

The District Court granted motions made by plaintiff parties who did not join the removal (Doc. Nos. 5 & 6), which motions were submitted only as supplement to the record, from state court by the ten governmental removers and which relied on Rule 12(b)(4) asserting that Watkins had 'defect of process on the 'third-party' rule'. After the Fifth Amended Counterclaim was 'struck', the Court denied 14 as moot. (10a)

The Court recited passages from 5 and 6 setting forth, as fact, the Plaintiff parties' false claim that Rule 14 was used, and used wrongly by the Watkins in adding parties to the Fifth Amended Counterclaim. (10a)

The District Court did not rule on the Watkins' A) Objection to Respondents' 1) removal without federal jurisdiction, 2) party status claims of 'third-party' and B) Motion for Review of Plaintiff's representation regarding party status in the removal notice. (Doc. No. 13) (App.H) The Watkins challenged removal as defective according to 28 U.S.C. §§1331, 1441 and 1446 and with United States Supreme Court holdings and stated: 1) the plaintiff parties had no standing to remove; 2) plaintiff parties were attempting removal on the federal questions raised in the counterclaim, 3) plaintiff parties were abusing process and acting in bad faith and fraudulently and 4) the case should be remanded to state court. (Id.)

The District Court interpreted the Petitioners' Motion to Remand (Doc. No. 15) (App.J) as a Motion to Have All Claims Removed to Federal Court, and denied the motion. (10a)

After striking the fifth amended counterclaim the Court stated, that because the Court now lacked federal question jurisdiction, it was remanded.

The Court went beyond requests by Respondents. The Court wrongly stated that the Fifth Amended Counterclaim attempts to add claims that appear to have either been previously ruled upon by the Greene County Circuit Court, barred by statute of limitations, or barred by the Rooker-Feldman doctrine. (Petitioners, in turn, addressed the issues thoroughly. (Doc. No. 29) (App. L, 75a-80a)

B. MOTION TO RECONSIDER (29) (App.L)

Petitioner Watkins moved for the Court to reconsider its October 26, 2009 ORDER that damaged the Watkins in denying the basic right to have their genuine issues of material fact decided in a trial. The Watkins asked the Court to reconsider their: (8 & 9) RESPONSES (Objections) To Plaintiff's Motions To Strike...; (13) OBJECTIONS AND MOTION pertaining to removal; (14) MOTION To Strike Plaintiff/Counterdefendants' Insufficient Defenses; (15)MOTION To Remand...; (16)DEMAND For A Trial By A Jury; (20)OBJECTION AND MOTION To Strike To Bradley Hancock's Answer; (22)OBJECTION AND MOTION To Strike Frank Crafton, Jake Crafton And Crafton Tree Service's Answers (which were only filed in state court).

The Motion and Brief in Support presented this Court's decisions and laws that disagree with the destructive power displayed by the District Court and shows that the Court could not rightly exercise jurisdiction in the matters brought by the true plaintiff, that the Watkins' Fifth Amended Counterclaim was not subject to dismissal and that the Court should have remanded the case intact to state court for lack of jurisdiction (App. L, 87a).

C. MOTION for RULING (Doc. No. 31) (App.M)

The Watkins requested a ruling on their (13) 'Objection to Plaintiffs' Attempts To Change Principal Parties Into Third Party Defendants' and Motion for Review of Plaintiffs' Removal'.

D. November 6, 2009 – ORDER (Doc. No. 35) (App. C)

Referring to the Watkins as Defendant/Third-Party Plaintiffs', the District Court DENIED motions 29 and 30.

E. MOTION TO SET ASIDE JUDGMENT BASED ON FRAUD (Doc. No. 37 & 38) (App. O)

Petitioner filed a motion and brief pursuant to Federal Rule 60(B)(3)(6) and 60(D)(3) showing fraud wrought upon the courts and Petitioner by plaintiff parties PLWC and Paragould City Attorney/State Prosecutor Kimberly Dale, attaching evidence.

F. MOTION 1) QUESTIONING SUPPORT OF THE FINDINGS; 2) THAT THE COURT AMEND ITS FINDINGS BY SETTING ASIDE ORDERS 3) MOTION FOR SHOW OF BASIS AND 4) CLARIFICATION OF PARTIES SO THAT [IN APPEAL], APPELLANTS MAY KNOW WHO THE APPELLEES ARE (Doc. #s 39 & 40) (App. P)

Petitioners filed these motions pursuant to Federal Rules of Civil Procedure Rule 41 and 52 and included other Eighth Circuit holdings demonstrating that the Fifth Amended Counterclaim cannot be dismissed under the circumstances.

G. November 24, 2009 – ORDER (Doc. #43) (App.B)

The District Court DENIED Watkins' 37 and 39, then stated that Watkins' Request for Clarification of Parties is DENIED as MOOT. The Court stated that the order remanding this case is not reviewable. The Court further stated that "the Clerk of the Court is directed to no longer accept filings from Defendants/Third-Party Plaintiffs in this case."

H. NOTICE OF APPEAL (Doc. # 45) (App. S)

The Watkins appealed and designated the record, appealing from all District Court ORDERS- 27, 35 & 43. (121a)

IV. United States Court of Appeals for the Eight Circuit

A. New Appearance

No briefs were allowed to be filed in the Eighth Circuit Court, yet Donis Hamilton, who was the attorney for PLWC in its initial 2006 complaint, and who had not made an appearance in District Court on behalf of the entity PLWC or its employees named in the Fifth Amended Counterclaim is on record as having made his first appearance, in the Eighth Circuit as representing the City of Paragould and entity PLWC and all of the PLWC employees who had been served with the Fifth Amended Counterclaim.

A letter dated December 08, 2009, informed Petitioners that no briefing schedule would be established for their case and on January 11, 2010, Petitioners filed their PETITION for rehearing, showing the errors of District Court in differing with laws and this Court's rulings on exercising jurisdiction in similar cases (App. T).

B. EIGHTH CIRCUIT DECISION (App. A)

The Court dismissed the appeal. (3a)

REASONS FOR GRANTING THE PETITION

I. Removal statute was not applied to the case by the District Court and the Eighth Circuit Court of Appeals sanctioned the departure when the important federal question has long been settled by this Court.

Petitioners respectfully submit that this Court should grant their petition for writ of certiorari and review the decisions of the United States District Court and the dismissal of their appeal by the Eighth Circuit Court Of Appeals because the District Court's decisions and avoidance of issues concerning the defective removal from state court to federal court is in great conflict with all the following sound decisions of other United States Courts Of Appeals and relevant decisions of this Court's fifty to one hundred year precedent.

A. Federal jurisdiction did not exist for the removal.

1. Federal question was not presented on the face of the initial PLWC' complaint that began this case in 2006.

2. The ten removers have never filed a complaint in this case, nor are they defendant parties.

3. Removal of this case was prohibited by statute.

4. Removal rights do not belong to the Plaintiff or a necessary plaintiff party who is joined with a counterclaim.

5. Removal rights belong only to the true defendant, not to the defendant on counterclaim.

6. A plaintiff party cannot become a defendant by stating such on a motion filed in court.

7. A plaintiff party cannot achieve removal rights by citing as basis the federal issues raised in the counterclaim.

This Court's stand on removal to federal court is shown to be decided. The District Court and then the Court of Appeals made orders and judgments that ignored every aspect of established removal mandatories and procedure and then erred in treatment of Petitioners' substantive issues. It seems that each available decision by this Court of settled removal statute interpretation becomes the Petitioners' argument for certiorari.

"The presence or absence of federal question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face on the plaintiff's properly pleaded complaint." Absent diversity, a case is removable only where a federal question is presented on the face of plaintiff's petition: "The party who brings the suit is master to decide what law he will rely upon." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). For a federal question to be

presented on the face of the initial complaint, the claim must arise from acts and wrongs inflicted upon the plaintiff. *American Fire & Cas. Co. v. Finn*, 341 U.S. 6, 13, 71 S.Ct. 534, 539-540 (1951).

It has been well established for many years that federal question jurisdiction is present " only when the plaintiff's statement of his own cause of action shows that it is based upon [federal] laws or [the federal] Constitution." *Louisville & N.R. Co. v. Mottley*, 211 U.S. 149, 152 , 43 (1908). Removability depends solely upon the nature of the plaintiff's complaint: an action may be removed to federal court only if a "right or immunity created by the Constitution or laws of the United States [constitutes] an element, and an essential one, of the plaintiff's cause of action." *Gully v. First National Bank in Meridian*, 299 U.S. 109, 112, 57 S.Ct. 96, 97, 81 L.Ed. 70 (1936).

Subject matter jurisdiction must exist as of the time the action is commenced. See *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 536, 538, 6 L.Ed. 154 (1824) (jurisdiction "depends upon the state of things at the time of the action brought"

The right to remove a case from state to federal court is vested exclusively in ". . . the defendant or the defendants . . ." 28 U.S.C. §1441(a); 28 U.S.C. §1446(a). *See also Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 61 S.Ct. 868 (1941). An action arising under state law may not be removed solely because a federal right or immunity is raised as a defense. *Tennessee v. Union & Planters' Bank*, 152 U.S. 454, 14 S.Ct. 654, 38 L.Ed. 511 (1894).

The Supreme Court has explained that an action arises under federal law if that law creates the cause of action, *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260, 36 S.Ct. 585, 586, 60 L.Ed. 987 (1916), or if a substantial question of federal law is a necessary element of plaintiff's cause of action, *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 199-202, 41 S.Ct. 243, 244-46, 65 L.Ed. 577 (1921). Moreover, the Court has long and consistently held that the federal-law element must appear on the face of plaintiff's well-pleaded complaint. *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9-10, 103 S.Ct. 2841, 2846-47, 77 L.Ed.2d 420 (1983). This means that a plaintiff may not establish federal jurisdiction by asserting in its complaint that the defendant will raise a federal-law defense to the plaintiff's claim, id. at 13-14, 103 S.Ct. at 2848-49.

Allowing a counterclaim to establish "arising under" jurisdiction would also contravene the longstanding policies underlying our precedents. *Holmes Group, Inc., Petitioner v. Vornado Air Circulation Systems, Inc.* (01-408) 535 U.S. 826 (2002) This Court in Holmes declined to transform the longstanding well-pleaded-complaint rule into the "well-pleaded-complaint-*or-counterclaim* rule" urged by respondent.

"[T]he federal question must be presented by plaintiff's complaint as it stands at the time the petition for removal is filed and the case seeks entry into the federal system. It is insufficient that a federal question has been raised as a matter of defense or as a counterclaim." *Metro Ford Truck Sales, Inc. v. Ford Motor Co.*, 145 F.3d 320, 326-27 (5th Cir. 1998). Removal is appropriate only where the change that

makes the action removable occurs as a result of a voluntary act by the plaintiff. *Yarnevic v. Brink's, Inc.*, 102 F.3d 753, 754 (4th Cir. 1996); *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 494 (5th Cir. 1996); *Poulos v. Naas Foods, Inc.*, 959 F.2d 69 (7th Cir. 1992). See also *DeBry v. TransAmerica Corp.*, 601 F.2d 480 (10th Cir. 1979).

B. Petitioners timely and thoroughly challenged removal and jurisdiction of a case being removed in stark contrast to removal statute and precedent.(Doc. No. 13) (App. II , 49a)

"28 U.S.C. § 1447(c), authorizes remands based on a defect in the removal or on a lack of subject matter jurisdiction. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711-12 (1996)."

"A plea attacking the jurisdiction of the federal court will be treated as a motion to remand. *Poorman v. Ry. Co.*, 255 Fed. 987."

28 U.S.C. § 1447(c) allows for consideration of the Watkins' arguments and motion, which contested the legitimacy of the removal, declared procedural and jurisdictional defect, demonstrated the wrongful claims of party status, suggested the realignment of parties, and addressed the fact that parties 'removing' were involved in claims jointly with parties who were 'not removing'.

The court's removal jurisdiction must be strictly construed and construed against removal *Burns v. Windsor Insurance Company*, 31 F.3d 1092, 1095 (11th Cir. 1994). "[W]here a plaintiff and defendant clash

about jurisdiction, uncertainties are resolved in favor of remand." Id. See also *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)

The Court had a duty when a motion to remand was made by the Petitioner. [T]he court can and should raise lack of subject matter jurisdiction on its own motion. See *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995) (If the parties fail to raise the question of the existence of jurisdiction) The party seeking removal has the burden of proving the grounds necessary to support removal, including compliance with procedural requirements. *See Christian v. College Boulevard Nat. Bank*, 795 F.Supp. 370, 371 (D. Kan. 1992); *Dawson v. Orkin Exterminating Co., Inc.*, 736 F.Supp. 1049, 1050 (D.Colo. 1990); *Laughlin v. Prudential Ins. Co.*, 882 F.2d. 187 (5th Cir. 1989).

Generally, the phrase "defect in removal procedure' includes any impropriety excepting those based on lack of subject matter jurisdiction. *Pierpoint v. Barnes*, 94 F.3d 813 (2nd Cir. 1996)). An example of a defect held to be procedural include is the removal of a case where removal is prohibited by statute. Id.

Case law above in stating that the defendant bears the burden of proving subject-matter jurisdiction in removed actions, demonstrates the *confusion of the parties and the lack of understanding in our case... as we, the Watkins, are the 'defendants' for purposes of removal.*

C. Realignment of parties as plaintiffs and defendants according to their real interests should have been addressed

before proceeding, especially when removal was challenged on that very issue.

Watkins' Doc. No. 13 (App. H) was not the first challenge to plaintiffs' removal rights. They had filed responses in state court which were supplemented into the record and docketed 8 and 9. In these Responses (8 and 9) to plaintiff parties' motions to strike, 5 and 6 (also filed only in state court), Petitioner made clear to the court that each party claiming to be 'third-party' was a plaintiff party joined as a necessary party according to Rule 19 and that each actor's words and actions against the Watkins were part of the Fifth Amended Counterclaim.

In *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 61 S.Ct. 868 (1941), the Supreme Court held that a plaintiff does not convert to a "defendant" for the purposes of the federal removal statutes, even though the defendant files a counterclaim against the plaintiff and even though under state law the plaintiff would be characterized as a defendant on the counterclaim. In *Shamrock*, the defendant's counterclaim satisfied the requirements of diversity jurisdiction, but the rule of *Shamrock* fully applies to counterclaims within federal question jurisdiction. In either case, removal by the plaintiff on the basis of the defendant's jurisdictionally sufficient counterclaim is not permitted.

The leading case on the realignment of parties according to their real interests in a controversy is *City of Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 62 S.Ct. 15, 86 L.Ed. 47 (1941). In that decision, the Court iterated the fundamental principle that "[d]iversity jurisdiction cannot be conferred upon the federal courts by the parties' own determination of who are

plaintiffs and who defendants." Id. at 69, 62 S.Ct. at 17. "It is our duty ... to 'look beyond the pleadings and arrange the parties according to their sides in the dispute'.... Whether the necessary 'collision of interests ... exists ... must be ascertained from the 'principal purpose of the suit' ... and the 'primary and controlling matter in dispute'...." Id.

In that case, finding that two gas companies had always been united in their position...the Court concluded that the companies had to be realigned on the same side of the controversy. That realignment destroyed diversity. Id. In the present case, realignment shows that the District Court never had jurisdiction, because plaintiff parties can not remove to Federal Court on the basis of federal questions in the petitioners' counterclaim. The reality of the record is that PLWC's initial complaint filed in state was: City of Paragould, Arkansas, Acting By and Through the Paragould Light & Water Commission vs. the Watkins. All Counterdefendants (Respondents) are plaintiff parties because they all wrought intentional harm upon the Watkins and they all have the common interest of seeking to avoid liability to the Watkins (Petitioners).

In determining whether to realign parties, we apply the "principal purpose" test: First, we determine the primary issue in controversy, and then we align the parties according to their positions with respect to the primary issue. *United States Fid. & Guar. Co. v. A & S Mfg. Co.*, 48 F.3d 131, 132-33 (4th Cir. 1995). "The determination of the 'primary and controlling matter in dispute' does not include the cross-claims and counterclaims filed by the defendants. Instead, it is to be determined by plaintiff's principal purpose for filing

its suit." *Zurn Indus., Inc. v. Acton Constr. Co.*, 847 F.2d 234, 237 (5th Cir. 1988) (emphasis added).

St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938); *Freeport-McMoRan, Inc. v. KN Energy, Inc.*, 498 U.S. 426, 428 (1991), it is the federal courts' duty to "look beyond the pleadings, and arrange the parties according to their sides in the dispute." *Chase Nat'l Bank*, 314 U.S. at 69. This Court must "work out the relation of each party to the suit according to the nature of his real interest, and *then* decide the question of jurisdiction." *Peters v. Standard Oil Co.*, 174 F.2d 162, 163 (5th Cir. 1949) (emphasis added).

D. Removal statute must be strictly applied. See 28 U.S.C. § 1441, 1446 & 1447.

The plaintiffs' state court complaint did not "arise under" federal law within the meaning of section 1331. The most obvious basis for section 1331 "arising under" jurisdiction--a federal claim--was absent from Respondent's initial 2006 complaint filed in circuit court. Because there is a presumption against removal jurisdiction, the court must strictly construe the federal removal statute and resolve all doubt in favor of remand. *Fajen v. Foundation Reserve Ins. Co.*, 683 F.2d 331, 333 (10th Cir. 1982). Thus, in the interest of comity and federalism, federal jurisdiction should be exercised only when it is clearly established, and any ambiguity regarding the scope of 1446(b) should be resolved in favor of remand to the state courts. *Manguno v. Prudential Property and Cas. Ins. Co.*, 176 F.3d 720, 723 (5th Cir. 2002)..

> Under 28 U.S.C. § 1441(a),plaintiffs are not granted any right to remove a state court action to federal court, a defendant in a state court civil action may remove the action to federal court if the federal court has original jurisdiction over the action. Removal is reserved for those cases "that originally could have been filed in federal court.

Caterpillar Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). "This jurisdictional prerequisite to removal is an absolute, non-waivable requirement." *Brown v. Francis,* 75 F.3d 860, 864 (3d Cir.1996)."

A case may be remanded for any defect in removal procedure. 28 U.S.C. §1447(c). Examples of defects held to be procedural include: (1) removal of a case where removal is prohibited by statute (*Pierpoint v. Barnes*, 94 F.3d 813 (2nd Cir. 1996)); (2) filing a notice of removal after the 30 day period (*Wilson v. General Motors Corp.*, 888 F.2d 779 (11th Cir. 1989)); and (3) failing to explain a defendant's failure to join in the notice of removal (*Home Owners Funding Corp. of America v. Allison*, 756 F.Supp. 290 (N.D. Tex. 1991)).

Even defendants have trouble removing. In The United States District Court for The Eastern District Of Pennsylvania, Civil Action no. 07-cv-1974, original defendants, who removed to federal court, having had diversity in line with statute, were remanded back because two defendants did not provide the Court with any information that they consented to removal within a 30 day period, provided no independent stipulation or communication verifying their consent to removal and did not enter an appearance before the Court.

"Under the rule of unanimity, ordinarily all defendants must join in a notice of removal or the case will be remanded. *Chicago, Rock Island, & Pac. Ry. v. Martin*, 178 U.S. 245, 251 (1900); *Bradley v. Md. Cas., Co.*, 382 F.2d 415, 419 (8th Cir. 1967). *Lewis v. Rego Co.*, 757 F.2d 66, 68 (3d. Cir. 1985)."

E. If the District Court does not have jurisdiction, a removed case should be remanded intact, the Court cannot make decisions that affect Petitioners' rights.

"The *Morongo* decision goes on to state that, if jurisdiction was lacking, orders issued thereafter are "nullities." *Morongo Band of Mission Indians v. Cal. St. Bd. of Equal.*, 858 F.2d 1380 (9th Cir. 1988)"

"We therefore hold this case controlled by the general rule that if federal subject-matter jurisdiction is absent at the time of the original removal petition, the case must be remanded to state court. *Npsa Service Corporation v. Independent American Savings Association, FSLA Et. Al.* 868 F.2d 1415 U.S. Court of Appeals. Fifth Circuit. (1989)."

In *Hunt v. Lamb*, 427 F.3d 725 (U.S.C. Court of Appeals, Tenth Circuit, 2005), a district court, with an order had dismissed a complaint under the *Rooker-Feldman* and *Younger* doctrines. Because this case was improvidently removed from state court, the federal district court's only option was to remand. The court vacated the dismissal order, remanded the case to the district court, and instructed the district court to remand the case to state court.

The U.S. Supreme Court, in *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 122 S. Ct. 1889, 153 L. Ed. 2d 13 (2002), issued a landmark decision on "arising under" jurisdiction of the federal courts. The action was not based on a federal law but the defendant's counterclaim, in which it invoked federal patent law to allege patent infringement by the plaintiff, seemed to give the court "arising under" jurisdiction. The Court thought otherwise, ruling that the counterclaim did not confer federal jurisdiction, vacated the District Court's judgment and remanded the case.

A decision by the Sixth Circuit Court disagrees with the rulings. "Applying the above principles, it is evident that the district court erred by dismissing the action rather than remanding. The Eleventh Amendment prevented the district court from exercising subject-matter jurisdiction over Roach's claims. Therefore, Sec. 1447(c) required the court to remand the action to state court." See *Smith*, 23 F.3d at 1140; *Henry v. Metropolitan Sewer Dist.*, 922 F.2d 332, 338 (6th Cir.1990)."

A District Court in *Wells Fargo Bank,Etc.,-Vs-Steven Gilleland*, et al., Case No. 3:08 CV 2970 remanded a case where removal was improper, joining with several other courts in agreeing with and adopting this analysis in *Dartmouth Plan, Inc. v. Delgado*, 736 F.Supp. 1489, 1492 (N.D. Ill. 1990)" federalism principles and the language of § 1441 militate against allowing a third-party action to bring otherwise nonremovable claims into federal court with it" and "just as a third-party has no special rights to remove, neither does a nonplaintiff counterdefendant." *Id.* The court concluded that just

as a third-party defendant has no special right to remove, "a counterdefendant is not a defendant joined in the original action and therefore not a party that can remove a state action to federal court." *Id.*

Reversal and remand in Petitioners' case should receive immediate attention by the fact of the defects in removal and the extreme damage that took place so improvidently by the plaintiff parties and the Courts.

F. Petitioners' motions for reconsideration, to set aside judgment based on fraud, objections to rulings and requests for rulings on motions were ignored by the District Court and that disregard was approved by the Eighth Circuit Court of Appeals

"The Supreme Court has emphasized that "'[p]lain error' review under Rule 51 is suited to correcting *obvious* instances of injustice or misapplied law." *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 256 (1981) (emphasis added)." "Rule 36 permits the Court "at any time [to] correct a clerical error in a judgment, order, or other part of the record." "Courts have long recognized "inherent equitable powers of courts of law over their own process, to prevent abuses, oppression, and injustices." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35,104 S. Ct. 2199, 2209 (1984) (internal quotations omitted). It seems beyond debate that those inherent powers must include a judge's power to correct his own mistakes in at least some circumstances."

Rule 46 allows an objection to a ruling or order.

Under Rule 52(a)(1)(2)(4)(5)(6) findings and conclusions by the Court must be based on facts and law, a party may later question the sufficiency of the evidence supporting the findings and the findings may be set aside if clearly erroneous with the reviewing court giving due regard to the trial court's opportunity to judge the witnesses' credibility. In this case, however, all credibility was given to the general defenses that are expected and allowed by the court on the part of the counterdefendants (Doc. Nos. 1, 2, 5, 6) and no credibility was given to the Watkins' arguments and evidence entered with detailed specificity in their fifth amended counterclaim (Doc. No. 1) and brief in support (No. 4) filed on September 18, 2009, their objections, motions and responses filed in federal court, Docket Numbers 10, 13, 14, 15, 16, 17, 20, 21, 22, 23 and 24, or their pleadings that were part of the record brought from state court.

"A motion to reconsider a remand order is proper "where the court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, which made an error not of reasoning but of apprehension." *Calderon*, 56 F.Supp. 2d at 999 (citing *Bank of Waunake v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990))."

"A motion to reconsider is available to correct manifest errors of law and fact, or to present newly discovered evidence. *Wolves v. National Railroad Passenger Corp.*, 1990 WL 84519, at *1 (N.D. Ill. 1990) (not reported in F. Supp.) (citing *Publisher's Resource Inc. v. Walker-David Publications, Inc.*, 726 F.2d 557, 561 (7th Cir. 1985))"

Pursuant to Federal Rules of Civil Procedure Rule 60(b) on motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the reason of (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party...

Pursuant to Federal Rules of Civil Procedure Rule 60(b)(4) the court may relieve a party from an order or final judgment if the judgment is void (as in the case of having no jurisdiction over parties who have not removed to federal court and having granted requests not made or deserved by proof.)

Pursuant to Federal Rules of Civil Procedure Rule 60(b)(6) the court may relieve a party from an order or final judgment for any other reason that justifies relief.

A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

Pursuant to 60(d)(3) this rule does not limit a court's power to set aside a judgment for fraud on the court.

II. The District Court and the Eighth Circuit Court of Appeals Has Departed So Far From The Accepted And Usual Course Of Judicial Proceedings That It Has Completely Denied The Petitioners Constitutional Rights To A

Trial by Substituting Denial Of Access To The Court And Judgments Of 'Moot' On Viable Substantial Claims.

A. District Court Interfered with a state court that was capable of preserving a sense of due process and justice.

With the granting of the two motions (Doc. #s 5 & 6) that the Circuit Court had refrained from granting, the Federal Court interfered with justice and in essence reversed State Court rulings, prejudicing citizens who have valid claims against the local government. The *Rooker-Feldman* doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "state-court judgments rendered before the district court proceedings commenced." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U. S. 280, 284 (2005)

Because of the serious interference of the Federal court with judicial procedure in municipal and state court, which is not sanctioned by Congress when it denies citizens the basic right to bring claims against government agents who have intentionally and maliciously injured the citizens with numerous violations of Constitutional rights including freedom of speech, the right to own property, contractual rights, the right to be free of search and seizure and the right to seek damages. (21a-40a)

Each ruling by the District Court is an error materially prejudicial to our substantial rights and denies us equal protection in favor of conspiratorial governmental interest. Dismissal of claims should not

be a substitute for a trial on merits. Even more the dismissal of an entire well supported case.

"The power reserved to the states under the Constitution to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the Judiciary Articles of the Constitution. 'Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.' " (Quoting *Healy v. Ratta*, 292 U.S. 263, 270, 54 S.Ct. 700, 703, 78 L.Ed. 1248 (1934).)

State courts may also properly hear section 1983 cases pursuant to the Supremacy Clause of Article VI of the U.S. Constitution. The Supremacy Clause mandates that states must provide hospitable forums for federal claims and the vindication of federal rights, including 42 U.S.C. § 1983, 1985, 1986 and 1988 violations. This point was solidified in the Supreme Court decision of *Felder v. Casey*, 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988). Our claims were properly before the State Court.

B. This is a first impression case in the Eighth Circuit and is an important First Amendment and Due Process Case.

In Petitioners' case various governmental entities have banded together to violate the rights of an individual for her exercise of her First Amendment rights and special remedy is needed by this Court.

District Court did not consider the facts of this extremely complicated unique case of government against 'we citizens', or the proof previously submitted in the state court record and attached to Watkins' filings in federal court.

C. The Eight Circuit has greatly contradicted its own position in removal and it is apparent on the face of the record that there has been a plain, manifest, clear, and gross abuse of discretion, a lack of jurisdiction, and an act in excess of jurisdiction on the face of the record, and the proceedings are erroneous on the face of the record.

The Eighth Circuit, in Petitioners' case, is disagreeing with its own decision pertaining to third-party removals: "Finally, in addition to federalism considerations, there are sound policy reasons to prohibit third-party defendants from removing. Allowing a third-party defendant to remove to federal court would subjugate the plaintiff's choice of forum to that of the third-party defendant. In this way, permitting the third-party defendant to remove "is too much akin to the tail wagging the dog." *Lewis v. Windsor Door Co.*, 926 F.2d 729, 733 (8th Cir 1991).

The 'third-party' claim was very apparent in all filings in both the District Court and the Eighth Court of Appeals, yet there was never a concern or question by the Court of impropriety even upon Petitioners' great dissent which left no doubt.

When it is realized that parties are reverse from the normal removals to federal court, steps should be

taken to rehabilitate the Watkins' claims and return them to state court, where a trial on the issues will be due process for the Petitioners. Removal statutes are created to hamper or restrict one who would remove on false premises IF the parties are aligned.

In *City of Waco v. United States Fidelity & Guar. Co.*, 293 U.S. 140, 143, 55 S.Ct. 6, 7, 79 L.Ed. 244 (1934), the Supreme Court found that the dismissal (but not the remand) was reviewable on appeal. In the present case, consideration should be given to the fact that removal at best was a mistake and according to the record was a fraudulent removal.

The Waco doctrine allows courts to review district court orders that lead to, but are separate from, orders of remand and have a conclusive effect upon the ensuing state court action. See, e.g., *Beauclerc Lakes Condominium Ass'n v. City of Jacksonville*, 115 F.3d 934, 935 (11th Cir.1997) (reviewing dismissal of federal claim that led to remand); *Armstrong v. Alabama Power Co.*, 667 F.2d 1385, 1387 (11th Cir.1982) (relying on Waco to review district court's dismissal of United States as party prior to remand). The Waco doctrine allows review on a district court's jurisdictional determinations. This distinction exists because the "matter of substantive law exception" and the Waco doctrine apply to different types of orders. The "matter of substantive law exception" applies to the review of a remand order itself, see *Glasser*, 806 F.2d at 1540 n. 2; see also *Regis Assocs. v. Rank Hotels (Management) Ltd.*, 894 F.2d 193, 194 (6th Cir.1990), that determines the substantive issues of the case in a way that is conclusive because it is unreviewable by the state court.

When a district court enters an order to do something other than remand (such as a dismissal of a claim or a party), and this order changes the contours of the state court action after remand, however, it does not matter whether the issue of law the court decided when it entered the order was jurisdictional or substantive; either way, the parties' rights have been altered in a manner that the state court cannot revisit. See *Carr v. American Red Cross*, 17 F.3d 671, 675 (3d Cir.1994) (reviewing order of dismissal of defendant that led to remand because "the underlying dismissal order clearly had independent relevance in adjudging the rights of [the] parties.... That is, the ramifications of the dismissal order impacted on more than the issue of federal subject matter jurisdiction alone.").

The dismissal of the Fifth Amended Counterclaim in Petitioners' case, like the Waco dismissal, altered the contours of the remanded state court action. As a result of the dismissal, petitioners can no longer pursue substantial claims against Respondents.

Under the collateral order doctrine of *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949), we may review a decision that (1) conclusively determines a disputed question that is (2) important and completely separate from the merits of the action and is (3) effectively unreviewable on appeal from a final judgment. See *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468, 98 S.Ct. 2454, 2458, 57 L.Ed.2d 351 (1978). A dismissal of a claim or a party prior to remand is such an appealable collateral order, because "if not reversed or set aside it will remain conclusive upon the

petitioner," *Katsaris v. United States*, 684 F.2d 758, 761 (11th Cir.1982)

Section 1447(d) does not allow district courts to insulate separate and severable concurrent orders from review merely by attaching those orders to a remand order. Where the concurrent order of the court is severable from the remand order "in logic and in fact," that order may be reviewable. See *City of Waco v. United States Fidelity & Guarantee Co.*, 293 U.S. 140 (1934); *Carr v. American Red Cross*, 17 F.3d 671, 674-75 (3d Cir. 1994) ("[W]e have embraced the principle that a district court cannot prevent appellate review of a final collateral order by contemporaneously remanding a case to state court.").

D. Summary Judgment Rules fairly practiced would not damage the Petitioners' case.

The test and challenge to the Petitioners' claims in the Fifth Amended Counterclaim should take place before a jury. The fact that the issues were in state court from 2006 to the time of removal to federal court, illustrates that there is substance in Petitioners' case. **(Doc. No. 1) (21a-48a)**

"In *Bell Atlantic Corp v. Twombly*, 550 U.S. 544 (2007), the court held that to survive a 12(b)(6) motion, a complaint need not contain detailed factual allegations, but *it must plead "enough facts to state a claim for relief that is plausible on its face." The Watkins have met all requirements to show that their case should not be discarded carelessly.*

The plain language of Sec.1447(c) gives "no discretion to dismiss rather than remand an action"

removed from state court over which the court lacks subject-matter jurisdiction. *International Primate Protection League v. Administrators of Tulane Educational Fund*, 500 U.S. 72, 89, 111 S.Ct. 1700, 1710, 114 L.Ed.2d 134 (1991) (internal quotation marks omitted)."

Nonetheless, at the summary judgment stage "all rational inferences from the evidence must be made in favor of the party opposing the summary judgment motion." *Ortiz v. Norton*, 254 F.3d 889, 896 (10th Cir. 2001).

Under rule 56, any party may move for summary judgment. *See* Fed. R. Civ. P. 56(a) and (b). The moving party initially carries the burden of pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case, although the moving party "need not affirmatively negate the nonmovant's claim in order to obtain summary judgment." *Allen v. Muskogee, Oklahoma*, 119 F.3d 837, 840 (10th Cir. 1997)

"First, because the district court lacked jurisdiction over the action, it could not rule on the merits of the claim. See *Bell v. Hood*, 327 U.S. 678, 682, 66 S.Ct. 773, 776, 90 L.Ed. 939 (1946); *Smith*, 23 F.3d at 1139 n. 10, *Henry*, 922 F.2d at 338; cf. *Goldsmith v. Mayor & City Council of Baltimore*, 845 F.2d 61, 64 (4th Cir.1988) ("A federal court must satisfy itself that it has jurisdictional power to rule on the merits of a case.").

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.

56(c). In ruling on a motion for summary judgment, the Court must view the evidence, and make all reasonable inferences from the evidence, in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

In order to defeat a motion for summary judgment, the non-moving party only has to show substantial evidence that a *dispute* of material facts exists, regardless of the strength of that evidence. For example, if one side on a summary judgment motion can produce the evidence of "a dozen bishops", and the other side only has the testimony of a known liar, then summary judgment is not appropriate. Deciding on the relative credibility of witnesses is a question for trial.

In ruling on a motion to dismiss, the district court must accept the allegations contained in the complaint as true, and all reasonable inferences from the complaint must be drawn in favor of the non-moving party. *Hafley v. Lohman,* 90 F.3d 264, 266 (8th Cir. 1996). Complaints should be liberally construed in the plaintiff's favor and should not be dismissed for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief." *Rucci v. City of Pacific,* 327 F.3d 651, 652 (8th Cir. 2003) (quoting *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957))

III. This decision circumvented established Supreme Court doctrine and carved a new exception into the well-pleaded complaint rule.

If left untouched, any person could remove to federal court at any time for any reason. The facts in

the cases and law having been considered and decided by this Court which are relevant to the issues in this case should be closely followed once again.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Connie Watkins and Richard Watkins
5404 Mark Street
Paragould, AR 72450
(870) 239-4166

Petitioners pro se

APPENDIX

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 09-3811

[Filed December 14, 2009]

City of Paragould, Arkansas,

Plaintiff - Appellee

v.

Connie Burns Watkins; Richard Watkins,

Third Party Plaintiffs - Appellants

v.

Mike Gaskill, individually and in his official capacity as Mayor of Paragould; J. D. Stephenson, individually and in his official capacity as Chief of Police of the Paragould Police Department; Todd Stovall, individually and in his official capacity as Captain with the Paragould Police Department; Monty Martin, individually and in his official capacity as Lieutenant at the Paragould Police Department; Mike Tinnin, individually and in his official capacity as a Police Officer with the

Paragould Police Department; Jaree Johnson, in her official capacity as a Police Officer with the Paragould Police Department; Phillip Faulkner, individually and in his official capacity as a Captain with the Paragould Police Department; Dennis Dunn, individually and in his official capacity as the City Inspector of Paragould; Randy F. Philhours, individually and in his official capacity as City Attorney; Kimberly B. Dale, individually and in her official capacity as Assistant City Attorney and Greene County Deputy Prosecutor; Allen Warmath, individually and in his official capacity as City Attorney for Paragould; Paragould Light & Water Commission, (PLWC) as an entity; Bill Fisher, individually and in his official capacity as CEO of PLWC; Darrell Phillips, individually and in his official capacity as Chief Operations of PLWC; William (Bill) McCartney, individually and in his official capacity with PLWC; Frank Curtis, individually and in his official capacity with PLWC; John White, individually and in his official capacity with PLWC; Larry Bobbit, individually and as a representative of PLWC; Daniel Wilkerson, individually and as a representative of PLWC; Don Wallace, individually and as a representative of PLWC; Crafton Tree Service, (CTS) as an entity and agent for PLWC; Frank Crafton, individually and in his official capacity as President of Crafton Tree Service; Jake Crafton, individually and in his official capacity as operations manager of Crafton

Tree Service and agent for PLWC; Bradley P. Hancock, individually and as owner of Bradley P. Hancock Surveying and Mapping and as a representative of PLWC,

Third Party Defendants - Appellees

Appeal from U.S. District Court
for the Eastern District of Arkansas - Jonesboro
(3:09-cv-00172-WRW)

JUDGMENT

The court has carefully reviewed the original file of the United States District Court and orders that this appeal be dismissed for lack of jurisdiction.

December 14, 2009

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

No. 3:09CV00172-WRW

[Filed November 24, 2009]

CITY OF PARAGOULD, ARKANSAS	)
PLAINTIFF	)
	)
VS.	)
	)
CONNIE BURNS WATKINS and	)
RICHARD WATKINS	)
DEFENDANTS/	)
THIRD PARTY PLAINTIFFS	)
	)
VS.	)
	)
MIKE GASKILL, *et al.*	)
THIRD-PARTY DEFENDANTS	)
	)

ORDER

Defendants/Third-Party Plaintiffs' Motion to Set Aside the Judgment Based on Fraud (Doc. No. 37) and Motion to Amend Findings, *etc.* (Doc. No. 39) are DENIED. Their request that the Court clarify who is appellant and appellee is DENIED as MOOT, because

the Order remanding this case is not reviewable on appeal.[1]

Since this case was remanded to the Circuit Court of Greene County, Arkansas, Civil Division, on October 26, 2009, -- nearly a month ago -- the Clerk of the Court is directed to no longer accept filings from Defendants/Third-Party Plaintiffs in this case.

IT IS SO ORDERED this 24th day of November, 2009.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

---

[1] 28 U.S.C. § 1447(d) ("An order remanding a case to the State Court from which it was removed is not reviewable on appeal or otherwise . . . .").

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

No. 3:09CV00172-WRW

[Filed November 6, 2009]

CITY OF PARAGOULD, ARKANSAS	)
PLAINTIFF	)
	)
VS.	)
	)
CONNIE BURNS WATKINS and	)
RICHARD WATKINS	)
DEFENDANTS/	)
THIRD-PARTY PLAINTIFFS	)
	)
VS.	)
	)
MIKE GASKILL, *et al.*	)
THIRD-PARTY DEFENDANTS	)

ORDER

Defendant/Third-Party Plaintiffs' Motion for Reconsideration (Doc. No. 29), Motion for Ruling (Doc. No. 31), and Motion for Order (Doc. No. 33) are DENIED. The October 26, 2009, Order remanding this case to Greene County, Arkansas remains in full effect.

IT IS SO ORDERED this 6th day of November, 2009.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

No. 3:09CV00172-WRW

[Filed October 26, 2009]

CITY OF PARAGOULD, ARKANSAS	)
PLAINTIFF	)
	)
VS.	)
	)
CONNIE BURNS WATKINS and	)
RICHARD WATKINS	)
DEFENDANTS/	)
THIRD-PARTY PLAINTIFFS	)
	)
VS.	)
	)
MIKE GASKILL, *et al.*	)
THIRD-PARTY DEFENDANTS	)
	)

ORDER

Pending are Third-Party Defendants' Motion to Strike Fifth Amended Counterclaim and

Cross-Complaint (Doc. Nos. 5, 6). Defendants have responded.[1]

On September 18, 2009, Defendants filed a 300-page Fifth Amended Counterclaim that added numerous third-party defendants and several claims for violations of federal law. Defendants filed the Fifth Amended Counterclaim 33 months after the commencement of the action, and four weeks before the trial date. Additionally, the Fifth Amended Counterclaim attempts to add claims that appear to have either been previously ruled upon by the Greene County Circuit Court,[2] barred by statute of limitations,[3] or barred by the *Rooker-Feldman* doctrine.[4]

Rule 14 of both the Arkansas Rules of Civil Procedure and Federal Rules of Civil Procedure

---

[1] Doc. Nos. 8, 9.

[2] See Doc. No. 3-10 (Order granting partial summary judgment on all claims except: selective enforcement; breach of contract; outrage; trespass; harassment; property damage; and excessive force. More specifically, the claims for "alleged constitutional violations . . . unlawful arrest . . . [and] malicious prosecution" were dismissed.).

[3] For example, 42 U.S.C. § 1986 has a 1-year statute of limitations.

[4] Under *Rooker-Feldman*, federal courts, other than the United States Supreme Court, do not have subject matter jurisdiction to hear challenges to state court judgments. If a "federal claim succeeds only to the extent that the state court wrongly decided the issue before it," the claim may not be heard by the federal court. *Lemonds v. St. Louis County*, 222 F.3d 488, 492 (8th Cir. 2000)

requires a third-party plaintiff to obtain leave of the court before filing a third-party complaint. Defendants' attempt to file a Fifth Amended Counterclaim without leave of the court is in violation of Rule 14. Had Defendants sought leave of the court, the request likely would have been denied, based on untimeliness, proximity to the trial date, previous court rulings, and the fact that several of the new claims appear to lack merit.

CONCLUSION

Based on the findings of fact and conclusions of law above, Third-Party Defendants' Motions to Strike Fifth Amended Counterclaim and Cross-Complaint (Doc. Nos. 5, 6) are GRANTED, and Defendants' Fifth Amended Counterclaim and Cross-Complaint is STRUCK.

Defendants' Motion to Have All Claims Removed to Federal Court Under 28 U.S.C. § 1367 (Doc. No. 15) is DENIED. All remaining pending motions (Doc. Nos. 10, 11, 14, 19, 24, and 25) are DENIED as MOOT.

Because diversity is lacking and the Court now lacks federal question jurisdiction, this case is REMANDED to the Circuit Court of Greene County, Arkansas, Civil Division.

IT IS SO ORDERED this 26th day of October, 2009.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 09-3811

[Filed February 11, 2010]

City of Paragould, Arkansas,

Appellee

v.

Connie Burns Watkins and Richard Watkins,

Appellants

v.

Mike Gaskill, individually and in his official capacity as Mayor of Paragould, et al.,

Appellees

Appeal from U.S. District Court
for the Eastern District of Arkansas - Jonesboro
(3:09-cv-00172-WRW)

CORRECTED ORDER

The court's order dated February 10, 2010, is corrected to read as follows:

"The petition for rehearing by the panel filed by appellants is denied."

February 11, 2010

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX F

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 09-3811

[Filed February 10, 2010]

City of Paragould, Arkansas,	)
	)
Appellee	)
	)
v.	)
	)
Connie Burns Watkins and Richard Watkins,	)
	)
Appellants	)
	)
v.	)
	)
Mike Gaskill, individually and in his official capacity as Mayor of Paragould, et al.,	)
	)
Appellees	)
	)

Appeal from U.S. District Court
for the Eastern District of Arkansas - Jonesboro
(3:09-cv-00172-WRW)

ORDER

The petition for rehearing by the panel filed by _____ is denied.

February 10, 2010

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX G

[Doc. No. 1 – Filed in Greene County Circuit Court on September 18, 2009 (excerpts from pages 1-6]

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS CIVIL DIVISION

NO. CIV-2006-335(II)

[Filed September 18, 2009]

CONNIE WATKINS AND)
RICHARD WATKINS)
COUNTERCLAIMANTS)
)
VS.)
)
CITY OF PARAGOULD, ARKANSAS; Mike)
GASKILL (individually and in his official)
capacity as Mayor of Paragould); J.D.)
STEPHENSON (individually and in his official)
capacity as Chief of Police of the Paragould)
Police Department); TODD STOVALL)
(individually and in his official capacity as a)
Captain with the Paragould Police Department);)
MONTY MARTIN (individually and in his)
official capacity as Lieutenant at the Paragould)
Police Department); MIKE TINNIN individually)
and in his official capacity as a police officer)
with the Paragould Police Department); JAREE)

JOHNSON (in her official capacity as a police)
Officer with the Paragould Police Department);)
PHILLIP FAULKNER (individually and in his)
official capacity as a Captain with the)
Paragould Police Department); DENNIS DUNN)
(individually and in his official capacity as the)
City Inspector of Paragould); RANDY)
PHILHOURS (individually and in his official)
capacity as City Attorney) KIMBERLY DALE)
(individually and in her dual capacity as)
Assistant City Attorney and Greene County)
Deputy Prosecutor); ALLEN WARMATH)
(individually and in his official capacity as City)
Attorney for Paragould); THE PARAGOULD)
LIGHT AND WATER COMMISSION (PLWC))
(as an entity); BILL FISHER (individually and)
in his official capacity as CEO of PLWC);)
DARRELL PHILLIPS (individually and in his)
official capacity as Chief Operations Officer of)
PLWC); WILLIAM (BILL) MCCARTNEY)
(individually and in his official capacity with)
PLWC); FRANK CURTIS (individually and in)
his official capacity with PLWC); JOHN WHITE)
(individually and in his official capacity with)
PLWC); LARRY BOBBITT (individually and as)
a representative of PLWC); DANIEL)
WILKERSON (individually and as a)
representative of PLWC); DON WALLACE)
(individually and as a representative of PLWC);)
CRAFTON TREE SERVICE (CTS) (as an entity)
and agent for PLWC); FRANK CRAFTON)
(individually and in his official capacity as)
president of Crafton Tree Service); JAKE)
CRAFTON (individually and in his official)
capacity as operations manager of Crafton Tree)
Service and agent for PLWC); BRADLEY P.)

HANCOCK (individually and as owner of)
BRADLEY P. HANCOCK SURVEYING AND)
MAPPING and as a representative of PLWC))
DEFENDANTS)
)

FIFTH AMENDED COUNTERCLAIM

Come now the Defendants/Counterclaimants Connie Watkins and Richard Watkins *Pro Se*, pursuant to the U.S. Constitution Article 1 Section 10, Article IV, the Due Process Clause, the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments, 42 U.S.C. §1983, §1985, §1986, and §1988, the provisions of Rules 12, 13, 15, 17, 18, 19 and 20 of the Federal Rules of Civil Procedure, The Arkansas Civil Rights Act, Ark. Code Ann. § 16-123-105 (Supp. 2003), Article II of the 1874 Constitution of Arkansas, and for their Fifth Amended Counterclaim with their state and federal causes of action asserted herein against...(**City of Paragould, Arkansas, Paragould Light and Water Commission (PLWC), and names stated above in individual and official capacities)** ....all as Defendants, do hereby repeat, amend and add parties and allegations and state:

1. Counterclaimants, Connie Watkins and Richard Watkins are private individuals who are taxpaying citizens and residents of Greene County, Arkansas and own real and personal property in Paragould.

DEFENDANTS

2. The Defendants on Counterclaim are comprised of individuals, entities, corporations and/or

businesses, who/which are residents of/ located in or do business in Greene County Arkansas, and who and which, by representation, in all dealings with the Watkins, acted in official capacity/or with authority of the Paragould, Light, Water Commission and/or authority of the City of Paragould.

2A. Defendant City of Paragould, Arkansas is a municipality, pursuant to provisions of state law, with the power and authority to determine and enforce policies.

2B. Defendant Mike Gaskill is an individual who is a citizen and resident of Greene County, Arkansas, serving as mayor of Paragould.

2C. Defendant J.D. Stephenson is an individual who is a citizen and resident of Greene County, and did, at the times relevant to the claims herein, serve as Police Chief of the Paragould Police Department.

2D. Defendant Todd Stovall is an individual who is a citizen and resident of Greene County, and did, at the times relevant to the claims herein, serve as a Captain of the Paragould Police Department.

2E. Defendant Monty Martin is an individual who is a citizen and resident of Greene County, and did, at the times relevant to the claims herein, serve as a Lieutenant at the Paragould Police Department.

2F. Defendant Mike Tinnin is an individual who is a citizen and resident of Greene County, and did, at the times relevant to the claims herein, serve as an officer with the Paragould Police Department.

2G. Defendant Jaree Johnson is an individual who is a citizen and resident of Greene County, and did, at the times relevant to the claims herein, serve as an officer with the Paragould Police Department.

2H. Defendant Dennis Dunn is an individual who is a citizen and resident of Greene County, and is serving inspector for the City of Paragould.

2 I. Defendant Randy Philhours is an individual who is a citizen and resident of Greene, and who served at times relevant as City Attorney of Paragould.

2J. Defendant Kimberly Dale is an individual, a resident of Greene County and did, at the times relevant to the claims herein, hold a dual capacity role as Assistant City Attorney for Paragould and Greene County Deputy Prosecutor.

2K. Defendant Allen Warmath is an individual who is a citizen and resident of Greene County and is serving as attorney for the City for Paragould.

2L. Defendant Paragould Light and Water Commission (PLWC) is a governmental actor.

2M. Defendant Bill Fisher is an individual who is a citizen and resident of Greene County and Chief Executive Officer of PLWC.

2N. Defendant Darrell Phillips is an individual who is a citizen and resident of Greene County and Chief Operations Officer of PLWC.

2O. Defendant Bill McCartney is an individual who is a citizen and resident of Greene County, Arkansas and is Electric Department Manager at PLWC.

2P. Defendant Frank Curtis is an individual who is a citizen and resident of Greene County and an employee with PLWC.

2Q. Defendant John White is an individual who is a citizen and resident of Greene County and an employee of PLWC.

2R. Defendant Larry Bobbitt is an individual who is a citizen and resident of Greene County and employee of PLWC.

2S. Defendant Daniel Wilkerson is an individual who is a citizen and resident of Greene County and employee of PLWC.

2T. Defendant Don Wallace is an individual and is a PLWC employee whose false accusations against Connie Watkins were integrated into PLWC's original complaint, but whose address has not been provided to the Counterclaimants.

2U. Defendant Crafton Tree Service is a corporate entity based in Mississippi County, Arkansas and an agent for PLWC.

2V. Defendant Frank Crafton is an individual and president of Crafton Tree Service and agent of PLWC.

2W. Defendant Jake Crafton is an individual and official of Crafton Tree Service and agent of PLWC.

2X. Defendant Bradley P. Hancock is an individual, a resident of Greene County, Arkansas, and is the owner of Bradley P. Hancock Surveying and Mapping and acted as an agent of PLWC.

JURISDICTION AND VENUE

3. Jurisdiction is asserted under the Civil Rights Act, 42 U. S.C. Sections 1983, 1985, 1986, and 1988, and in state court, the Supremacy Clause that federal law is state law, (in federal court would be pursuant to 28 U.S.C.§ 1331, § 1343 and § 1367 for the purpose of federal issues). This court has jurisdiction and venue of this cause. ...

* * *

[Doc. No. 1 – Fifth Amended Counterclaim – Excerpts- Count 1]

375. For the purpose of each of the Counterclaimants' counts and claims that name Donis Hamilton, Hamilton was acting on behalf of PLWC and each of his actions are attributable to PLWC and all did contribute to the injury, damage and deprivation of rights of Connie Watkins, the Watkins, and/or the Watkins' property.

COUNT I (Page 140)

Outrage

376. All of the allegations set forth in **¶1-375** of this Counterclaim are incorporated herein, again, as if set forth word for word.

377. In addition to the extreme and outrageous nature of the conduct described in each paragraph in this count wherein the actor's actions were known by the individuals and entities to be such that would cause great emotional pain, a major source of injury is the abuse by each defendant of a relationship with the counterclaimants which gave the defendant power to damage the counterclaimants' interests with great deliberation, malicious intent and secrecy.

378. Paragould Light Water Commission (PLWC) top officials collected false defamatory materials in conspiracy against Connie Watkins and encouraged employees in various departments to participate by writing fictitious accounts. The accounts of Connie Watkins 'cursing workers' were **ALL** written 'under the influence of' and 'by' **Bill McCartney**. **¶21, 29, 34, 56, 58, 59, 61-63, 69-72, 76, 124-125, 135, 215**

379. William (Bill) McCartney repeatedly and for the purpose of harassment, sent the same PLWC worker, Larry Bobbitt, who destroyed trees in 1999, and who the Watkins' requested not be sent back, when the Watkins' requested tree trimming for utility line clearance. **¶26, 66**

380. Donis Hamilton intentionally prejudiced surveyor, Brad Hancock, against the Watkins' with known lies prior to the commission of a survey, and requested the surveyor to make a fraudulent survey, in conspiratorial preparation, with Bill Fisher, for

government action against the Watkins' property. ¶ 40, 64

381. Licensed surveyor, Hancock, at the behest of PLWC, defrauded Connie Watkins of land that she has owned for 28 years by illegally changing her property lines and by creating multiple revisions of his fraudulent April 2006 survey for various deviant purposes of PLWC in their efforts to defraud the Watkins. Hancock's revisions completely changed the shape of the Watkins lot, deleted notes by a PLWC in-house surveyor, who had correctly surveyed the Watkins' lot in 2002, and deleted the northeast corner original pin from the 1978 survey, all to deceive the courts and the State Board. ¶41, 64, 141, 142

382. PLWC CEO Fisher conspired to obtain a fraudulent 'utility easement' to defraud the Watkins' and to deceive the courts. ¶42

383. PLWC CEO Fisher obtained fraudulent permission to cut trees on the Watkins' property. ¶43

384. PLWC CEO Fisher harassed Mrs. Watkins by notifying her every few years that her trees were or were not on her property, which ever suited his purposes, and kept her property flagged with surveys since 2002, having as many as eight flags marking the corners of her lot at one time. ¶19, 25, 29, 41, 44,

385. PLWC's contractor, Crafton Tree Service (CTS) cut the Watkins' fence row trees without permission, against policy, according to the preference of a neighboring property owner, and in a way to destroy the trees in July 2006. ¶45, 53,137

386. PLWC and CTS knowingly used the false Hancock survey to damage the Watkins' by denying rights and destroying property. ¶50-53

387. PLWC and CTS discriminated against the Watkins' with unequal treatment in line clearance. ¶45; P5, P8, P9

388. Bill McCartney dismissed Connie Watkins' customer concerns with mockery and hang-ups and took retaliatory actions after each call. ¶38, 39-40, 51-54, 57-58, 65-66, 75-

389. Jake Crafton wrote a fraudulent letter on November 9, 2006, pretending to be 'Daniel Wilkerson' and falsely accused Connie Watkins of having 'used profanity' toward PLWC employees. ¶69, 312; D 173&4, D52 & D53 McCartney caused PLWC employees to write false defamatory letters accusing Connie Watkins of cursing PLWC employees and McCartney put the letters and Jake Crafton's letter in the 'Connie Burns Watkins File' at PLWC. ¶70-72

390. PLWC CEO Fisher used letters fraudulently written by Jake Crafton and McCartney to try to influence PLWC attorney Hamilton to take court action against Connie Watkins. ¶69-73

391. Hamilton stated in a letter to Fisher, dated November 16, 2006, that no trimming needed to be done on the Watkins' trees and it would be some time before trimming would need to be done. He advised Fisher not to 'take Mrs. Watkins to court' after reviewing the 'November 9, 2006' letters. ¶73 PLWC CEO Bill Fisher, on November 17, 2006, agreed with Hamilton, that the Watkins' trees were clear of the

utility lines and that PLWC would take no action, ¶74 but, in fact he did not stop the strategic objective to retaliate against Connie Watkins for having exercised her First Amendment right to ask questions of a government agency and to complain about PLWC's lack of compliance with standards.

392. Fisher, 12 days after agreeing with Hamilton that the Watkins' trees were not encroaching the utility lines, solicited the mayor and chief of police to go against Connie Watkins by stating 'the need to trim trees' and presenting false claims of bad conduct and fraudulent 'official looking' documents. ¶77 Fisher had "never called out the police with any other property owners in Paragould". T8

393. Mayor Mike Gaskill and Chief J.D. Stephenson established a 'special policy' to go against a citizen in support of illegal action by another government agency. ¶78 Gaskill and Stephenson instructed Captain Todd Stovall and Lieutenant Monty Martin, who in turn instructed Officers Mike Tinnin and Jarce Johnson in a plan that was to be executed ¶78, 79, 80, 81 the next morning against Connie Watkins, and with no discussion or explanation to Connie Watkins. ¶85, 87, 88; D25

394. The Paragould Police Department (PPD) **refused equal protection** to the Watkins when they conducted a raid against the Watkins, interfering with an existing agreement and in cohesive illegal action with PLWC. ¶82, 83, 86-88, 94, 111, 126 &127, 130, 131, 133, 134

395. McCartney arranged for Jake Crafton to be front and center on November 28, 2006, even

though Crafton had angrily told Mrs. Watkins that he would never return to her property again and even though McCartney had angrily and falsely accused Mrs. Watkins, before hanging up on her, that "Crafton should not be sent to her home because she had followed them around". ¶**57, 65, 88**

396. McCartney arranged for an army of men and equipment for shock and harassment purposes as had never been seen in the area, as witnessed and verified by a neighbor. ¶**87, 88**

397. McCartney assaulted Richard Watkins in lieu of partaking in discussion with Mr. Watkins and displayed anger and unrelenting vengeance toward Mr. Watkins. ¶**89, 97, 112, 116**

398. Officers approached Mr. and Mrs. Watkins telling Connie Watkins that 'she would go to jail if she got in the way'. She never got in the way, but after 2 minutes and 51 seconds of the Watkins exercise of their First Amendment rights in attempt to find out the nature of the raid, Officer Tinnin announced, "We're done. We're done". Connie Watkins was **arrested without probable cause** or a court order, in violation of Fourth Amendment rights and charged with 'disorderly conduct. ¶**94; D25**

399. While taking Mrs. Watkins to a police car Officer Johnson assaulted and battered Mrs. Watkins, then falsely accused Mrs. Watkins of "battery". Johnson roughly handcuffed Connie Watkins, shoved her, which tightened the cuffs to a painful condition, and then refused to loosen the cuffs. Johnson refused the basic medical needs of allowing for the cleansing of abrasions by rusty, nasty cuffs. ¶**102-103, 109**

400. Officer Tinnin was joined by Lieutenant Martin to participate in and to oversee the trespass and cutting of trees on the Watkins' property, even though the Watkins had protested and had an agreement with PLWC pertaining to the trees and though the trees were not encroaching the lines. The trees were butchered and rendered prospective nuisances. ¶113, 114, 137

401. Donis Hamilton and CEO Bill Fisher spearheaded and participated in many illegal and damaging actions against Connie Watkins to cover up wrongful perpetrations by PLWC, and **ALL WERE WITH** the **FULL KNOWLEDGE** that PLWC had moved illegally and maliciously against Connie Watkins on November 28, 2006 (¶73-74), that the PPD had been solicited by Fisher's deceit, that Connie Watkins was innocent of interfering with 'tree trimming operations' on November 28 or any other day..... Hamilton, Fisher and Jake Crafton committed many additional malicious actions against Connie Watkins and Richard Watkins to deliberately and unconscionably have Connie Watkins falsely convicted to cover PLWC's agents' wrongdoings:

402. On the day of Connie's arrest Fisher designed a deliberately deceitful flyer "to all PLWC employees" to set the Watkins apart as 'suspicious individuals' with whom employees were to take special negative notice or precautions, stating , "...due to an incident concerning tree trimming" ¶119; D28

403. Bill Fisher made false statements to the Daily Press on November 28, 2006 to further the defamation of the Watkins, claiming that the Watkins interfered with 'tree trimming operations' on

November 28, 2006 and in the past and that PLWC's conduct toward the Watkins had been honorable. ¶120, 121

404. Fisher met with Chief of Operations Officer, Darrell Phillips', Hamilton and McCartney in criminal planning for further punishment, intimidation, harassment, (¶122,123) and the filing of a baseless lawsuit against Connie and Richard Watkins for the purpose of harassing and damaging the Watkins, to **divert attention from PLWC crimes** against Connie Watkins and to obstruct justice for her in the November 28, 2006 PLWC-concocted charge of 'disorderly conduct'. ¶136

405. In January of 2007, Hamilton attempted to harass and intimidate Connie Watkins at her plea date for the trumped-up disorderly conduct charge. ¶139

406. Hamilton was a 'witness' to the answer that Brad Hancock sent to the State Surveyor's Office to uphold Hancock's fraudulent survey commissioned by PLWC on the Watkins' property, and Hamilton provided defamation of Connie Watkins that Hancock included in his fraudulent answer, as support for the 'right to defraud' the Watkins. ¶141

407. Connie Watkins was given no notice of any accusations against her prior to the municipal court trial, in spite of a thorough Brady discovery request in violation of Sixth Amendment rights. ¶143

408. Fisher and Hamilton filled the 'file of the prosecution' with fraudulent documents for the purpose of deceiving the court and obstructing justice

for Connie Watkins in her July 16, 2007 trial. ¶144, 174

409. Fisher gave false testimony in municipal court to obstruct justice and to secure the conviction of Connie Watkins on July 16, 2007, including testifying that PLWC was at the Watkins on November 28, 2006 for the purpose of "tree trimming". ¶146; T 4, T6

410. Fisher obstructed justice for Connie Watkins as he tried to influence prospective witness who were 'under the rule' at her municipal trial. ¶147

411. The prosecution team including Mayor Mike Gaskill, the PPD, Donis Hamilton and Jimmy Gazaway withheld exculpatory evidence from the municipal court in Connie Watkins' trial for 'disorderly conduct on July 16, 2007. ¶148, 175, 176

412. In municipal court on July 16, 2007, Officers Mike Tinnin and Jaree Johnson testified in contradiction to the police tape (D25) recorded by Officer Johnson and all police records made on November 28, 2006 and lied in conspiracy with PLWC agents and Jake Crafton, under oath, to secure the conviction of Connie Watkins. ¶149-158

413. On July 16, 2007, Jake Crafton lied under oath, giving testimony contrary to the physical evidence rule and all police records made on November 28, 2006, continuing in the conspiracy that he and Bill McCartney had been perfecting from the time Hamilton had encouraged McCartney to 'gather the men' in July of 2006 and had noted false accusatory accounts. ¶56, 58, 59, 60, 63, 69-73, 164-165; D25

414. Hamilton, obstructed justice for Connie Watkins by having discussion with witnesses 'under the rule' concerning testimony. ¶166

415. The City Prosecutor, Jimmy Gazaway, obstructed justice for Connie Watkins by instructing the Court to dismiss the defense evidence while the case was under advisement. ¶ 169

416. The municipal court decision of 'guilty' was a cohesive government entity plan and the lies and fraud created therein secured the conviction of Connie Watkins. ¶170-172

417. Brad Hancock called Connie Watkins on October 25, 2007 and advised her, against state laws and rules, that she should accept his survey, in a selfish attempt to avoid conflict at the state level for his unethical conduct and to further deceive and defraud the Watkins for PLWC. ¶179

418. When Brad Hancock withdrew his professional opinion to satisfy the state surveyor, Donis Hamilton, self-servingly 'reminded' Hancock "that PLWC had had a long time conflict with Connie Watkins", and that PLWC had commissioned Hancock to "re-establish Watkins' lot", in an attempt to force Hancock to unethically continue to defraud the Watkins. ¶180, 191, 197 Hamilton then noted that Brad Hancock claimed NOT to have vacated his survey. ¶198

419. City Attorney/ State Prosecutor Dale called Connie Watkins with false pretense saying that she would see that an investigation would be done if Watkins would provide information that Watkins had

described. Watkins provided information that proved her innocence and no investigation was made. ¶183-186, 208

420. Bill Fisher falsified records and sent a fraudulent answer to an FOIA question by Connie Watkins. ¶205-207

421. Bill McCartney directed Daniel Wilkerson to call Connie Watkins from the PLWC employee break room and then a typed memo with the typed name 'Daniel Wilkerson', was put into the 'Connie Watkins File', mischaracterizing the call and accusing Connie Watkins of having cursed PLWC employees. Also McCartney solicited memos from Daniel Wilkerson's family for the file. ¶215

422. Dennis Dunn, City Inspector, in June 2008, harassed Connie Watkins, singling her out, upon her use of her business sign to post messages criticizing the local government and told her that the sign 'might be in violation', though her sign had been in the same place close to ten years, receiving no attention. ¶213, 216, 217

423. Assistant City Attorney/State Prosecutor Kimberly Dale worked closely with the Municipal League Attorney for the City of Paragould and Donis Hamilton while preparing to prosecute Connie Watkins in her September 16, 2008 circuit court appeal of the municipal criminal conviction. Hamilton shared pleadings of the civil trial with Dale and sent her protected speech items, stating innocence, written by Connie Watkins that later turned up in Dale's hand waiving in front of the judge as if 'evidence of criminal conduct'. City Attorney Dale having great knowledge

about the Watkins' counterclaim against PLWC and the City, and having been given the exculpatory information by Mrs. Watkins, designed a **MOTION IN LIMINE** to keep the facts of absolute innocence out of the trial. ¶**189, 199, 211, 214, 219, 223, 227, 278**

424. A circuit court deputy barred Connie Watkins from the unusual critical pre-trial hearing, in violation of her Sixth Amendment rights. ¶**224** The trier of facts was deliberately given false information by Dale, that was kept hidden from Connie Watkins who was then unable to contradict. ¶**225, 226, 315** Prosecution **suppressed evidence** and refused to provide discovery. ¶**221, 230, 238, 239; T163**

425. The entire prosecution team suppressed evidence, including Mayor Gaskill and Chief of Police Stephenson. ¶**182, 183, 192, 220**

426. PLWC's fraudulent documental authority carried over into the circuit court trial by way of written sentence by the municipal court and by the ravings of the City Attorney Dale who had the power to corruptly prosecute Connie Watkins to favor and advantage the City in the civil suit between the Watkins and the City. ¶**149, 155, 227, 232**

427. Fisher and Hamilton hid the truth and fought viciously for the vindictive prosecution of Mrs. Watkins, knowing her to be 'not guilty'. ¶**233-234**

428. Officers Mike Tinnin and Jaree Johnson, and Jake Crafton were the only prosecution witnesses, but **Dale falsely testified** by leading the witnesses in testimony known by themselves and City Attorney Dale to be wild, false accusations that were in direct

contradiction to police records, the arrest tape and physical evidence. ¶240-257, 262-264

429. The court's judgment echoed Dale's rebut and witness lies, and though prosecution produced no evidence other than the false testimony, it was that testimony, not what Connie Watkins had not done on the morning of November 28, 2006, that secured her conviction. ¶265-277

430. The Watkins put new messages criticizing the wrongful conviction of Connie Watkins on their business sign in September 2008, then received a harassing call from the City Inspector's office that the sign was 'in violation of city ordinance' and 'was to be moved immediately', after complete silence from the city for three months, during which time the Watkins had posted 'no critical messages'. ¶280-282

431. For the ten years prior to the call in September, the inspector's office had not notified any previous owners of the sign OR landlord of the business location, that the sign was in violation of any ordinance as stated by each of the previous owners and according to Dennis Dunn.

432. City Inspector Dennis Dunn interfered with a business relationship when he called the landlord of the Watkins' business on the same day that he sent a warning to Connie Watkins, and the landlord called Connie Watkins and told her she would have to take her 'political messages down or else'. ¶284

433. City Inspector Dunn sent a warning to Connie Watkins about her sign which was legally in its 'grandfathered in' position and in 'similar situation'

with many other signs whose owners told Connie Watkins they had not been contacted by the city. Attachments to Dunn's letter did not relate to the sign or show violation. The 'ordinance' listed as 'being violated' was not attached and did not relate to the papers enclosed, nor was it produced upon Watkins' request at the inspector's office. The Inspector refused to speak with Connie Watkins and his office could not produce ANY ordinance that could show violation of the Watkins' sign. **¶283, 295, 308-309**

434. Dennis Dunn, on October 7, 2008, harassed Connie Watkins at her place of business and brought two men to help him bully Mrs. Watkins to move her sign because of her exercise of her First Amendment right to post messages critical of the local government. Dunn refused to address any issues such as length of time the sign had been in place and other signs being closer to the highway throughout Paragould. Dunn could not tell Mrs. Watkins how she could find the property lines of the business, highway right of way, or the city set-back lines that he was telling her 'she was violating'. **¶288, 310** Still having cited no ordinance or regulation which would tend to authorize or justify such conduct, that same day, Dunn mailed a citation to Mrs. Watkins to appear in court on an ordinance violation. **¶290-294**

435. With City Attorney Dale having secured a conviction for the City and PLWC, Hamilton, on October 7, 2008, knowing Mrs. Watkins was not guilty, suggested to the Municipal League Attorney that she should '**further set out the conviction** of Connie Watkins in the Circuit Court and file for summary judgment concerning practically all of the claims for damages 'since Connie's conviction pretty well

eliminates the bulk of those." Further, Hamilton stated, 'that would eliminate Connie's claims and free PLWC up for a hearing on their injunctive relief' **¶291** (wherein PLWC was trying to keep Mrs. Watkins from being able to walk freely on her own property).

436. Hamilton, on October 7, 2008, took opportunities to put before the court known false information about the case and tree situation to set the false idea that Mrs. Watkins was a serial trouble maker. **¶292, 293**

437. Dennis Dunn was the 'assigned officer' on a secret incident report filed with the PPD which states that Connie Watkins was arrested on October 13, 2008 on a state offense **5-71-214 which is a Class C Misdemeanor.** Connie Watkins was not arrested, but the report stated that she had been. The citation sent by certified mail on October 8 stated that the citation was 'IN LIEU OF' ARREST. **Connie Watkins was not notified** of such an 'offense' and no due process was afforded for her to defend herself. This is a permanent record. Dennis Dunn is not authorized to arrest her, nor to enter the incident into the Paragould Police System. But it is there with no explanation. The 'Miranda' has '10/13/08' filled in. **¶296, 354; D50a**

438. Dennis Dunn also made a SECRET POLICE REPORT on October 13, 2008, with a violation noted, which is different than the violation on the October 7, 2008 citation. Connie Watkins was not notified. Dennis Dunn is not authorized to write this report and no police officer's name is attached to the report. **¶297, 323; D50b**

439. Connie Watkins could not get information from City Attorney Philhours on the 'violation', but he informed her that she WAS in violation months before the city commissioned a survey by Eric Coleman to determine if she was even in violation and deceitfully stated that he had 'looked at documents that showed violation'. **¶285, 304, 308, 311** City Attorney Philhours had been prejudiced against Connie Watkins earlier by Hamilton. **¶187**

440. Connie Watkins filed for a new trial based on newly discovered evidence using the finding of Handwriting and Fraud Specialist', David Cupp, that indeed Jake Crafton had handwritten a fraudulent letter in conspiracy with Bill McCartney, but the circuit court made no ruling. Crafton's letter along with other fraudulent letters had been used to solicit action by the mayor and chief of police to frame Connie's arrest. **"A conviction based on fraud must be overturned", ¶314, 317, 318, 319, 328**

441. In October 2008, in district court, Dennis Dunn and Allen Warmath requested the immediate removal of the Watkins' sign 'without a trial'. That was not granted. The trial was set for January. **¶305** In January 2009, the prosecution postponed the trial and set it for March 26, 2009, to take place after the civil case WAS to be tried. **¶322** Connie Watkins made a motion for a probable cause hearing on the sign issue in district court, but she was not afforded a hearing. **¶325**

442. In early 2009, State Deputy Prosecutor Kimberly Dale was working the City's false 'ordinance violation' against Connie Watkins, though Allen Warmath was representing the City in the court room.

Dale called for the subpoena of Dennis Dunn. ¶320, 329, 330

443. PLWC singled the Watkins out. By February 11, 2009, PLWC had tracked down a certain worker from Conway Arkansas who was one of the many workers in one of the many bucket trucks which rescued Paragould and restored electricity after the ice storm of the century. Much of Paragould was black for days with many hundreds of utility poles broken like pretzels on long stretches on PLWC territory, even where no trees were near lines. 'The tracked down man' had assisted Richard Watkins by cutting one limb off of a line. The limb had bent double before breaking, but broke some time AFTER the electricity had gone out. The limb was in one of the two tall pin oak trees on the north side of the Watkins' house and had been topped by PLWC in 1999 by tree trimmer Larry Bobbitt . ¶137, 331, 332

444. The Watkins filed an FOIA request for preparation for the 'sign issue', but Mayor Mike Gaskill denied the request. ¶ 342, 343

445. The office of the clerk of the district court told Mrs. Watkins on March 25, 2009 that all of her subpoenas had been served, but upon getting to court on March 26, 2009, the Watkins found out the subpoenas had not been served. ¶341

446. On March 26, 2009, after the prosecution had put on its case and had rested, the Watkins were denied due process when they were threatened with a 'large fine if they continued with their case', and being that the district court judge stated that at the end of the day he was going to find for the city, the Watkins

had no choice but to stop without presenting evidence. The court did not look at an ordinance to interpret it. The court stated that it was not interested in constitutional issues such as a similar sign in similar situation or that the sign had been grandfathered in and was not in violation. City attorney Allen Warmath made claims but **did not show the Watkins' sign to be in violation** with documentation. Still no ordinances were shown to the Watkins. They were told by the judge that to avoid a fine, they could move their sign according to the city's terms and the case would be dismissed in one year and the Watkins had to choose between one of two deprivations of rights. **¶346**

447. The Watkins' were wrongfully forced to move their sign from a legal position to avoid wrongful punishment. **¶347** The damage was the abridgment of the Watkins' rights of equal treatment and protection by government in the singling out, based on the exercise of freedom of speech.

448. Immediately after the Watkins moved their sign to 'another legal' position, Dennis Dunn, without speaking to the Watkins, subjected the Watkins to continued harassment and threats when he sent the same warning letter he had sent on September 23, 2008, and again the enclosures did not show violation and did not pertain to the warning letter. Dunn also for the second time interfered with a business relationship when he sent a copy of the threatening letter to the landlord. Each letter included a 'penalty for violation' page. **¶350-351**

449. On April 10, 2009, the Watkins spoke with Dunn and Mayor Gaskill who refused to answer questions and who violated Article II of the

Constitution of Arkansas, Sections 1, 2, 3 &12 Neither the inspector nor the mayor was familiar with the ordinance they were referring to and neither referred to the ordinance named on the citation or the arrest report. Dennis Dunn referred to a survey acquired by the city just before the March 26, 2009 court date, stating in opposition to prosecution explanation that the 'west' side was the 'back' side of the property. ¶352

450. In Violation of Article IV of the U.S. Constitution and the Fourteenth Amendment – On April 11, 2009, the Watkins' landlord called the Watkins and told them that they had 'till the next day at noon' to move the sign because the landlord and her husband had been threatened by the City concerning the sign. ¶353

451. ... Richard and Connie Watkins went to the city council meeting on April 13, 2009 to ask for fairness and immediate intervention concerning the repetition of warnings from the city inspector about a legal sign and from his being able to write false arrest reports against Connie Watkins. After Allen Warmath had argued an 'ordinance' against the Watkins for thirty to 45 minutes, misinterpreting and falsely stating that it proved violation by the Watkins' sign, he stated that he had not had time to read **'it'**, and 'it' was an ordinance that he had 'misinterpreted' when he had presented the prosecution side on March 26, 2009 in district court ... and 'it' was an ordinance different than the ordinance named 'violated' by the Watkins in either of the two warning letters they had received from the inspector's office. ¶357-366

452. **The City injured the Watkins in forcing the disposal of property and property**

rights - Watkins WERE forced by the City to dispose of their sign to avoid additional citations and arrests, which would result in a fine in excess of $20,000 per sign issue in limbo in the district court. First Amendment rights were aborted at that time.

453. The City caused damage to the Watkins by denying due process in the forced disposal of the Watkins' sign, by interfering with the Watkins' business and denying the use of the sign for advertising purposes, by singling the Watkins out due to their protected speech against local government corruption and by denying the Watkins' right to be free of government interruption in their lives and with their property.

454. Each of the stated occurrences inflicted by Defendants was intentional; as a further proximate result of Defendants' actions and the consequences directly caused by them, Counterclaimants suffered severe humiliation, mental anguish and emotional and physical distress; and Defendants' actions significantly and painfully altered the Watkins' lives as they have tried to enjoy their property and live peaceably. Counterclaimants seek relief of compensatory damages of $500,000 and $2,000,000 in punitive damages on this count.

[Doc. No. 1 – Fifth Amended Counterclaim – Partial Listing of Claims]

COUNT II (Page 156)

42 U.S.C. § 1983 - Civil Actions for Deprivation of Rights

455. This count includes **Separate 1983 Claims** against defendants for their retaliatory actions against one or both of the Watkins for the exercise of protected free speech. In each claim under this count, each named entity, agent or individual referenced as an actor, was acting under **color of law,** but outside the scope of authority, for its/their own sadistic pleasure, abusing power, and in concert to violate the Constitutional rights of Counterclaimants to bring intentional harm with intrusion into the Watkins' personal lives and property interests, and directly contributed to the great deprivation of Counterclaimants' federal "rights, privileges and immunities secured by the Constitution and laws" of the United States found in **Article 1, Section 10,** Article IV and the Fourth, Fifth, Sixth, and Fourteenth Amendments. Also as a proximate and direct result of Defendants' constant oppressive actions and intrusion into the Watkins' personal lives and rights, that continues to this day, the Watkins are substantially and irreparably injured, having great emotional and mental pain and economic harm.

COUNT II - Claim 4 (Page 162)

§ 1983 Monell Claim –
(Against the City of Paragould)

COUNT II - Claim 8 (Page 166)

§ 1983 False Arrest and Unjustified Search, Fourth Amendment

COUNT II - Claim 10 (Page 170)

§ 1983 Excessive Force

COUNT II - Claim 12 (Page 171)

§ 1983Abuse of Process (CIV-2006-335)

COUNT II - Claim 16 (Page 177)

**§ 1983 Jake Crafton Individually
(Under the First and Fourteenth Amendments)**

COUNT II - Claim 17 (Page 178)

**§ 1983 Bill Fisher Individually
(Under the First and Fourteenth Amendments)**

COUNT II - Claims 19,20, 22
(Pages 178-181)

**§ 1983 Violation of a Constitutional Right
(Sixth Amendment)**

COUNT II - Claim 22 (Page 180)

**§ 1983 Violations Constitutional Rights
(Sixth Amendment)**

COUNT II - Claim 23 (Page 181)

§ 1983 Abuse of Process (CR 2007-391)

COUNT II - Claim 26 (Page 186)

§ 1983 Jake Crafton Individually

COUNT II - Claim 27 (Page 186)

§ 1983 Malicious Prosecution (CR 2007-391)

COUNT II - Claim 28 (Page 186)

§ 1983 Equal Protection "Class of One"

COUNT II - Claim 33 (Page 196)

§ 1983 Interference with a Contract (September 2008)

COUNT II - Claim 36 (Page 197)

§ 1983 Fourth and Sixth Amendment Violations in False Arrest (October 2008) Arrest Report 'violation of setback ordinance statute 01- 20'

COUNT II - Claim 50 (Page 201)

§ 1983 First Amendment Claim against Randy Philhours Individually

COUNT II - Claim 51 (Page 201)

§ 1983 First Amendment Claim against Bill McCartney Individually

COUNT II - Claim 52 (Page 202)

§ 1983 Fourteenth Amendment Equal Protection Claim against Bill McCartney

COUNT II - Claim 59, 60, & 61 (Page 204)

§ 1983 First, Fourth & Fourteen Amendment Claim against Todd Stovall, J.D. Stephenson and Mike Gaskill Individually

COUNT III (Page 205)

Title 42 USC § 1985. Conspiracy to Interfere With Civil Rights.

.....

681. In each claim in Count III, Counterclaimants allege conspiracy by governmental agencies, agent(s) and individuals with deliberate intent to deprive the Watkins of equal protection of the laws and Constitutional rights, and to cause violations of Article II Sections 2, 3, 8, 9, 21 & 22 including the loss of property and liberty interests to the point of false arrest occurred as planned, staged and carried out from July 25, 2006 (¶78-81, 94) through the present as explained in great detail in the counterclaimants' statement. motivated by malice and bias due to the Watkins exercise of First Amendment rights; in which each of Defendants' numerous actions directly injured one or both of the Watkins in their person and property, and damaged by depriving one or both of the Watkins of rights and privileges and immunities guaranteed by the Constitution of the United States, and that the conspiracy continues to this day, to keep Connie Watkins falsely convicted of a crime she did not commit in order to cover up the governmental crimes of Paragould, Arkansas and to benefit the City and to harm the Watkins in civil suit.

COUNT III - Claim 1 (Page 205)

§ 1985 PLWC/Bradley Hancock –
To Defraud- Land

COUNT III - Claim 2 (Page 206)

§ 1985 PLWC/Fisher – To Defraud - Land

COUNT III - Claim 3 (Page 207)

**§ 1985 McCartney/Jake Crafton –
To Interfere With Constitutional Rights**

COUNT III - Claim 4 (Page 208)

**§ 1985 PLWC/Hancock - Governmental
Interference with the Watkins' Property Rights**

COUNT III - Claim 5 (Page 205)

**§ 1985 McCartney/Jake Crafton –Fraudulent
Letter to Cause Imprisonment and Prosecution
and Other Loss First Amendment
And Property**

COUNT III - Claim 13 (Page 219)

**§ 1985 PLWC/Fisher/Crafton/CTS –
To Obstruct Justice**

COUNT III - Claim 14 (Page 221)

**§ 1985 PLWC/Fisher/Prosecution –
Prosecutorial Abuse and Obstruction of
Justice to Falsely Convict**

COUNT III - Claim 15 (Page 222)

**§ 1985 PLWC/Hancock – To Fraudulently
Deprive a Landowner of Land Rights**

COUNT III – Claim16 (Page 223)

§ 1985 PLWC –Government Interference with Property Rights, To Maliciously Defraud

COUNT III – Claim17 (Page 223)

§ 1985 City/Dale – Malicious Intent against Rights

COUNT III - Claim 19 (Page 226)

§ 1985 PLWC/City/Dale – In Malicious Prosecution Based On First Amendment

COUNT III - Claim 20 (Page 228)

§ 1985 PLWC/City/Fisher/Dale/PPD Obstruction of Justice

COUNT III - Claim 22 (Page 229)

CTS/Jake Crafton – To Convict an Innocent Person

COUNT III - Claim 26 (Page 234)

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COUNT III - Claim 27 (Page 235)

City/Dunn/Warmath/Dale – Malicious

Prosecution First, Fifth, Sixth and Fourteenth Amendments violations

COUNT III - Claim 28 (Page 236)

City/Dunn/Gaskill/Warmath/Philhours– Governmental Interference with Property, Harassment, Interference with A Business Relationship, Deprivation of Property, & First Amendment speech

COUNT IV (Page 239)

Title 42 USC § 1986 – Action for Neglect to Prevent

COUNT VI (Page 253)

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COUNT VII (Page 265)

DEFAMATION

COUNT VIII (Page 285)

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COUNT IX (Page 292)

Singled Out For Malicious Treatment

COUNT X (Page 292)

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Malicious Trespass

COUNT XII (Page 296)

Property Damage PLWC/Crafton/City

COUNT XIV (Page 297)

Harassment

COUNT XVI (Page 298)

Assault

COUNT XVIII (Page 300)

False imprisonment

COUNT XIX (Page 300)

Malicious Prosecution

APPENDIX H

[Doc. No. 13 – Filed Oct 15 2009– filed by Petitioners']

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed October 15, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
Mike GASKILL, *et al.*	)
PLAINTIFF/COUNTERDEFENDANTS	)

COUNTERCLAIMANTS' OBJECTION TO PLAINTIFFS' ATTEMPTS TO CHANGE PRINCIPAL PARTIES INTO THIRD PARTY DEFENDANTS AND OBJECTION TO JURISDICTIONAL BASIS AND PROCEEDURE IN FILING OF PLAINTIFFS' NOTICE OF REMOVAL AS SEPARATE THIRD PARTY DEFENDANTS AND OBJECTION TO, AND MOTION FOR REVIEW OF PLAINTIFF'S

REPRESENTATION REGARDING ITS PARTY STATUS IN THE REMOVAL NOTICE

Come now the Counterclaimants, Connie Watkins and Richard Watkins *Pro Se*, for their objection.....

1. In case CIV-2006-335(H), *true plaintiffs*, City of Paragould and PLWC, chose the state court as the forum and are bound by that choice and may not remove the case. It is insufficient that federal questions have been raised on a counterclaim. Plaintiff's claim that its employees, whose actions damaged the Watkins, are 'separate third party status' does not permit Plaintiff's employees to remove state court action into federal court, and principal parties cannot be changed into third parties by Plaintiff 'speaking it', when no filing or action by the Watkins has been made to support Plaintiffs' assertion.

2. Plaintiff, the City of Paragould by and through Paragould Light and Water Commission filed the initial complaint against the *true defendants*, the Watkins, on December 6, 2006. Plaintiff/counterdefendants with its/their initial complaint having presented no federal question are not in compliance with removal statutes and should not be allowed to remove the case according to removal statute: 28 U.S.C. §§ 1441(a) and 1446(a).

3. The initial complaint, must present federal-question jurisdiction at the time the petition for removal is filed. The well-pleaded complaint rule—requires that the federal question must appear on the face of a well-pleaded complaint to trigger § 1331 jurisdiction.

4. Plaintiff/counterdefendants, claimed 'original jurisdiction' in their Notice of Removal, paragraph No.6, based on Counterclaimants' fifth amended counterclaim. Effective removal according to statute is the identification of a federal question in the notice to remove, but 'original jurisdiction' means that the statutory basis for the claim is to be apparent or explained from the 'original' plaintiff's complaint.

5. The right to remove a case from state to federal court is vested exclusively in "...the defendant or the defendants..." 28 U.S.C. § 1441(a). Only the *true defendants*, Richard and Connie Watkins would have had the right to remove the case to federal court had federal question been presented by Plaintiffs' complaint. With the federal court's realignment of the parties, the defect would be quite apparent and would be properly remanded.

6. The time for removal of a civil action or proceeding is within thirty days after the receipt by the *true defendant* of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, pursuant to 28 U.S.C. § 1446(b). That was nearly three years ago.

7. On September 18, 2009, Counterclaimants filed their Fifth Amended Counterclaim according to provisions of Rules 12, 13, 15, 17, 18, 19 and 20 of the Federal Rules of Civil Procedure. Counterclaimants made no use of Rule 14 (the third party rule). The Watkins' intention was to name the parties individually and in their official capacities, who were the original actors in injurious actions, directly, not indirectly, who were indispensable parties, that under Civil Procedure rule 19(a), must be joined for a just

adjudication of wrongs, and who knew or should have known that the claims would have been brought against them as result of their participation in the violations against the Watkins, their participation in the construction of the initial complaint filed against the Watkins and by descriptions and proof of their actions filed in this case by the Watkins.

8. A party joined by a counterclaim is not permitted by 28 U.S.C.A. § 1441(a) to remove a case from state court to federal court. The parties attempting removal were mandatory parties according to Rule 19, having been served the fifth counterclaim approximately one month ago and are now claiming false standing as 'third parties'.

9. The Watkins (Counterclaimants) have not filed a third party complaint and there are no third party litigants in this case. There has never been mention of 'third party' anything in this case until the September 25, 2009 filing by the attorney for PLWC in representing defendants Bill Fisher, Darrell Phillips, Bill McCartney, Frank Curtis, John White, Larry Bobbitt, Daniel Wilkerson and Don Wallace, all PLWC employees. Said attorney invoked Rule 14, labeling Plaintiff's employees 'third party defendants' although Counterclaimants had on September 18, 2009, joined or named the principal parties in the fifth amended counterclaim, according to Rules 13(c),(e),(f) and (h), 15 & 19. Plaintiff herein accused the Watkins of 'failing to follow the Rules of Civil Procedure (14) in the manner by which "third parties" may be added in a proceeding'.

10. In their Fifth Amended Counterclaim, the Watkins, according to the above stated rules, named principal parties whose wrongful actions against the

Watkins were described in the Watkins' first counterclaim and subsequent amended counterclaims AND parties whose wrongful actions against the Watkins were not mature for claims for inclusion in the Fourth Amended Counterclaim. Each party named in the Fifth Amended Counterclaim individually and in his or her official capacity with Paragould Light and Water Commission (PLWC) and/or with the City of Paragould, acting under color of law, outside of the scope of their duties, deprived the Watkins of "rights, privileges or immunities secured by the Constitution and laws" of the United States and became liable and available for claims under 42 U.S.C. §§ 1983, 1985, 1986 and 1988. Counterclaimants have pled with the required specificity in their fifth amended counterclaim, to connect the parties with conduct that violates the constitutional rights of the Watkins' that originated and that continues from the same basis of activity and policy. The Watkins have not become 'third party plaintiffs', have not named any 'separate third party defendants', have not served documents on 'separate third party defendants' and have not filed any cross-claims.

11. Plaintiff/Defendants have abused process in using the process of court filings, not for the purpose for which it was designed by law, but to secure some collateral advantage to the plaintiff and to cause some collateral disadvantage to the Watkins (counterclaimants). First and foremost, *all filings in this case*, by Plaintiff/Counterdefendants against the Watkins are an abuse of process as shown by answers filed on December 22, 2006 and August 15, 2008 and affidavits and approximately thirty pleadings filed by pro se Watkins since October 3, 2008. Each filing in

this case is an abuse of process, made clear on pages 26-28 in the Fifth Amended Counterclaim.

12. Certain principal parties, employees of PLWC (9. above) and employees of the City of Paragould are suddenly, without justification, calling themselves 'third party defendants' in this case CV-2006-335(H), styled in Greene County Circuit Court. City of Paragould employees have filed to remove to federal court on an individual basis, being represented by Robert L. Beard, Arkansas Municipal League Attorney, who had been representing the City of Paragould in the case, and are at this time attempting to separate and leave parties and actions in State Court for the purpose of dissolving viable claims and prejudicing the Watkins. The parties that are attempting to remove as 'third parties' are Mike Gaskill, J.D. Stephenson, Todd Stovall, Monty Martin, Mike Tinnin, Jaree Johnson, Phillip Faulkner, Dennis Dunn, Kimberly Dale, and Allen Warmath.

13. Before the filing of the fifth amended counterclaim, the actions of all 25 counterdefendants were being defended by the attorney for PWLC with the aid of the Arkansas Municipal League attorney, and filings bore the statement, 'Attorney's for Plaintiff'. With the filings on September 25, 2009 (9. above), attorney for PLWC represented individual employees, separating them from PLWC, and on October 2, 2009, the Arkansas Municipal League attorney represented individual City employee counterdefendants and not 'Plaintiff'. Plaintiffs' attorneys are dividing and separating a case that has been shown herein to have a multitude of state and federal claims arising from the one nucleus of governmental retaliation against Connie Watkins for

her exercise of freedom of speech, the cover up of which spawned scores of bad faith and malicious actions and reactions including the initial complaint filed by Plaintiff PLWC and City.

14. One, Bill Fisher, PLWC CEO, who signed the original December 6, 2006 complaint by affidavit, is now claiming to be a 'third party defendant' and claims in said September 25th, 2009 filing to have been 'added as third party defendant by the fifth amended counterclaim'.

15. According to Rule 14(a) *the original plaintiff may assert any claim against the third party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third party plaintiff*....the very nature of the third party practice rule 14(a)(2)(3), that would pit the so called 'separate third party defendants' against themselves, demonstrates that it is not applicable and is not relevant in this case.

16. Even if the individuals represented by Mr. Beard, Arkansas Municipal League Attorney were third party defendants, they would not be able to remove the case. The majority of circuits have held that third party defendants, brought into state action by an original defendant may not exercise the removal to federal court. A third-party defendant is distinct from 'the defendant or defendants' who are permitted to remove cases pursuant to 28 U.S.C. § 1441(a)

17. All claims are interwoven in such manner that they cannot be pulled apart and scattered without great injustice to the damaged counterclaimants and great expense to the taxpayers. Logical relationship

exists between the complaint and the approximately one hundred thirty claims, thus the same evidence that refutes Plaintiffs'/Counterdefendants' complaint, supports Counterclaimants' fifth amended counterclaim, and, to the point that each of the twenty-five Counterdefendants are subject to testify concerning issues in as many as forty claims with some counterdefendants having knowledge concerning actions comprising all 130 claims in the fifth amended counterclaim. All components of 80 claims are inseparable from the parties who are attempting to remove.

18. Plaintiff/Counterdefendants were not compliant with Rule 11. 28 U.S.C. § 1446(a). Truth is the basis of Rule 11 and Plaintiff had no truth in its complaint on December 6, 2006 as clearly shown therein and on pages 27-28 of the fifth amended counterclaim in that PLWC knew that the Watkins' trees were not a problem, but based a complaint on false statements. Also:

A) Contrary to Rule 11(b)(1), Plaintiff/ Counterdefendants' removal is for the purpose of harassment, to cause unnecessary delay, and to increase the cost of litigation as supported, by the fifth amended counterclaim and its exhibits, documented proof and circumstantial evidence.

B) According to Rule 11(b)(3) the factual contentions are to have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. The Plaintiff/ Counterdefendants have refused to provide one piece of evidence to support their position, even when their

position has been challenged by the Watkins' counter motions for summary judgment has been stated in affidavits and filings in state court: February 25, 2009, February 26, 2009, March, 13, 2009, April 16, 2009, September 18, 2009 and September 21, 2009

C) According to Rule 11(b)(4), 'the denials of factual contentions are to be warranted on the evidence or, if specifically so identified, are to be reasonably based on belief or a lack of information'. Plaintiff/ Counterdefendants' have consistently refused to specify factual contentions, and have made only flat denials of Counterclaimants' allegations which are supported by substantial proof.

19. Upon this filing, counterclaimants have not received the answers of all Counterdefendants who were joined with the fifth amended counterclaim. It is not clear who else will join with the removal if any. Individual Randy Philhours, is included on the 'Civil Docket FOR CASE #: 3-09-cv-001 72-WRW' as 'Third Party Defendant', but has not answered the complaint and the Countercomplainants do not have knowledge of his stance and do reserve the right to address that issue upon receiving his answer.

20. The above said docket also refers to Paragould Light & Water Commission as 'ThirdParty Defendant', but separates City of Paragould as being Counter Defendant.

21. Shuttling a case between two courts that each have subject matter jurisdiction would be an extraordinary burden on the Watkins, even more so than the present situation. Plaintiff has continued since December 2006, in frivolous filings, requiring

lengthy filings of the Watkins and would now cause repleading and duplication of records, for the purpose of delay as shown, in the very least as such conduct has been demonstrated with the circumstantial evidence contained in the fifth amended counterclaim.

22. Under § 1447(c), "[if] at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." Revelation by Counterclaimants of perceived defects at this time should prevent later discovery of these matters and interruption and confusion and superfluous extraordinary expense and to avoid the expense of duplicity in trials based on the same nucleus action or at least any repercussion against the Watkins including remanding expenses or any cost associated with this removal action.

23. Additionally, Plaintiff/Counterclaimants should not use this exercise as forum shopping.

24. The majority of Counterclaimants' claims raise federal questions, but jurisdiction was not obtainable by federal questions raised on counterclaim. Plaintiffs' use of goodwill advertising and their good relation with the local newspaper has greatly damaged our chances of a fair trial in Greene County Circuit Court. If anyone in this case should remove to federal court, the Watkins should, but they have no more right by federal statutes than do the so called 'separate third party defendants' to remove.

25. If the federal court accepts jurisdiction based on the federal violations set forth in the fifth amended counterclaim removal notice by the Plaintiff/counterdefendants, the court should bring the

whole case under § 1367, as the nucleus for all claims is the same, and parties who established the nucleus continued to manipulate the damage to the Watkins by incorporating additional governmental agencies and agents, to the point that no matter which vehicle of retaliation was in operation, the original Plaintiff/counterdefendants were at the wheel.

26. When the propriety of removal jurisdiction is challenged, the removing party bears the burden of proving the existence of Federal Jurisdiction. Removal is defective under 28 U.S.C. §§1331, 1441 and 1446.

WHEREFORE, because there is a presumption against removal jurisdiction, the counterclaimants pray that consideration will be given, before the expense of great time and money into this process, to the fact that the application for removal is defective in procedure and jurisdiction and should not be removed to advantage a party that has dirty hands, shown herein, but should the removal be permitted, the entire case in state court should be removed as one to better serve justice and economy as presented.

.....

BRIEF IN SUPPORT

Joinder was proper in accordance with Rule 19 herein because a final resolution of this dispute would be severely hindered without the presence of Plaintiff's employees named in the Fifth Amended Counterclaim. Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 107-09, 88 S.Ct. 733, 19 L.Ed.2d 936 (1968).

The purpose of Rule 19 is to "permit joinder of all materially interested parties to a single lawsuit so as to protect interested parties and avoid waste of judicial resources." *Moore v. Ashland Oil, Inc.*, 901 F.2d 1445, 1447(7th Cir. 1990).

Because the right of removal is vested exclusively in true defendants, a plaintiff who has chosen to commence the action in state court cannot later remove to federal court, even to defend against the counterclaim. See 14C Wright, Miller and Cooper, Federal Practice and Procedure; Jurisdiction 3d §3731 (1998). The "well established rule is that the plaintiff that chose the forum is bound by that choice and may not remove the case." Scott v. Communications Services Inc. 762 F. Supp. 147,150 (S.D. Texas 1991).

The Court thus held that the original plaintiff against whom the original defendant had filed a counterclaim could not remove the case to federal court under § 1441(a)'s predecessor. 313 U.S. 100 *Shamrock Oil Gas Corporation V. Sheets*.

A party joined by a counterclaim is not permitted by 28 U.S.C.A. § 1441(a) to remove a case from state court to federal court. *Palisades Collections, LLV. v. Charlene Shorts v. AT&T Mobility*, LLC; ATT&T Mobility Corporation.

The right to remove a case from state to federal court is vested exclusively in "...the defendant or the defendants..." 28 U.S.C. § 1441(a); 28 U.S.C. § 1446(a). *Shamrock Oil and Gas Corp. v. Sheets*, 313 U.S. 100, 61 S.Ct. 868 (1941).

For more than fifty years, courts applying *Shamrock Oil* have consistently refused to grant removal power under § 1441(a) to third party defendants. District courts within the Fourth Circuit have adopted the majority rule that "a third-party defendant is distinct from 'the defendant or defendants' who are permitted to remove cases pursuant to 28 U.S.C. § 1441(a)" *Cross County Bank v. McGraw 321 F. Supp*. 2d 816, 821-22 (S.D. W. Va. 2004).

But just as a third-party has no special rights to remove, neither does a nonplaintiff-counterdefendant. A counterdefendant is not a defendant joined in the original action and therefore not a party that can remove a state action to federal court." *Dartmouth Plan Inc. v. Delgato*, 736 F. Supp. 1489, 1392 (N.D. ILL. 1990).

"...federal jurisdiction cannot be invoked on the basis of a defense or counterclaim." *Holmes Group, Inc. v. Vorando Air Circulation Systems, Inc.*, 535 U.S. 826 (2002). *Vaden V. Discover Bank*, -- U.s. --, 129 S.Ct. 1262 (2009) A litigant files a state law claim in state court, and the opponent parries with a federal counterclaim, the action is not removable to federal court, even though it would have been removable had the order of filings been reversed. . . *Vaden*

The court, if necessary, may realign the parties as plaintiffs and defendants according to their real interests. *City of Indianapolis v. Chase National Bank of New York*, 314 U.S. 63, 62 S.Ct. 15, 86 L.Ed. 47 (1941)

"The presence or absence of federal-question jurisdiction is governed by the "well-plead complaint rule" which provides that federal jurisdiction exists only when a federal question is presented on the face on the plaintiff's properly pleaded complaint." Catepillar Inc. v. Williams 482 U.S. 386, 392,107 S.Ct. 2425 96 L.Ed 2d 318 (1987). "[T]he federal question must be presented by plaintiff's complaint as it stands at the time the petition for removal is filed and the case seeks entry into the federal system. It is insufficient that a federal question has been raised as a defense or counterclaim." Metro Ford Truck Sales Inc. v. Ford Motor Co., 145 F 3d 320, 326-27 (5th Cir. 1998).

In a civil matter, the initial pleading is a complaint, which initiates a lawsuit.

Section 1367(a) provides that when district courts have original jurisdiction, they "shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy . . . ." This section of the statute, which essentially codified the Supreme Court's decision in United Mine Workers v. Gibbs, grants supplemental jurisdiction as long as the federal and state claims derive from a "common nucleus of operative fact."

A court with original jurisdiction over a single claim in the complaint has original jurisdiction over a "civil action" under §1367(a).

Once a court has original jurisdiction over the action, it can then decide whether it has a

constitutional and statutory basis for exercising supplemental jurisdiction over other claims in the action. Section 1367(b), which contains exceptions to §1367(a)'s broad rule, does not withdraw supplemental jurisdiction over the claims of the additional parties here.

The removal statute, which is nationwide in its operation, was intended to be uniform in its application, unaffected by local law definition or characterization of the subject matter to which it is to be applied. Hence, the Act of Congress must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be removed from the state to the federal courts. Cf. Burnet v. Harmel, 287 U. S. 103, 287 U. S. 110.

Whenever any action is removed from a State court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant in such action in the State court shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the State court.

Title 28, U.S.C. §1447 (c) provides: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." When the propriety of removal jurisdiction is challenged, the removing party bears the burden of proving the existence of Federal Jurisdiction. *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1356 (11th Cir. 1996), overruled on other grounds by, *Cohen v. Office Depot*, 204 F.3d 1069 (11th Cir. 2000).

Because there is a presumption against removal jurisdiction, the court must strictly construe the federal removal statute and resolve all doubt in favor of remand. *Fajen v. Foundation Reserve Ins. Co.*, 683 F.2d 331, 333 (10th Cir. 1982).

While the Federal Rule is not clear on whether objection to a party as not being the real party in interest must be made by Rule 12(b) motion or by answer, Ohmer Corp. v. Duncan Meter Corp., 8 F.R.D. 582 (D.C. Ill., 1948) and Clark v. Chase National Bank, 45 F. Supp. 820 (D.C. NY, 1942), Rule 12(b) does permit such objection without any question, although the objection can be raised under Rule 8(c).

Under the rule of unanimity, ordinarily all defendants must join in a notice of removal or the case will be remanded. Chicago, Rock Island, & Pac. Ry. v. Martin, 178 U.S. 245, 251 (1900); Bradley v. Md. Cas., Co., 382 F.2d 415, 419 (8th Cir.1967).

The crux of the tort of abuse of process, whether civil or criminal, lies in the malicious abuse or misuse of a process or writ which has been lawfully and properly issued. See *Mullins v. Sanders*, 1949, 189 Va. 624, 54 S.E. 2d 116.

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APPENDIX I

[Doc. No. 14 –Filed on Oct 15 09 (Correction of a word – Doc. No. 19 filed Oct 20 09) – by Petitioners]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed October 15, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al.*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

COUNTERCLAIMANTS' MOTION TO STRIKE PLAINTIFF/**COUNTERDEFENDANTS'** INSUFFICIENT DEFENSES AND NOTICE THAT PLAINTIFF DID NOT NOTICE PARTIES

Come now the Counterclaimants Connie Watkins and Richard Watkins *Pro Se*.....

1. Counterclaimants filed a Fifth Amended counterclaim on September 18, 2009.

2. Plaintiff, by attorney Donis Hamilton, filed a motion to strike the fifth amended counterclaim on September 25, 2009 and made a general flat denial to claims that required specific pleading, contrary to Rule 8(b)(2)(3)(4)(6) and answers should be stricken and assumed admitted.

3. Certain counterdefendants, on September 25, 2009, by attorney Donis Hamilton, filed a 'separate motion of third party defendants' Bill Fisher, Darrell Phillips, Bill McCartney, Frank Curtis, John White, Larry Bobbitt, Daniel Wilkerson and Don Wallace to Strike Fifth Amended Counterclaim... against them individually', which stated that the Watkins had committed a defect of process, but did not attempt to answer the complaint or address any allegation against them.

4. Plaintiffs/Counterdefendants have in bad faith refused to answer, contrary to Rules 8 and 12 and have disregarded Rule 11 in lieu of attempting to claim false status as parties.

5. Plaintiff asserted that the Watkins had misused Rule14 when it was clear from the pleadings that the Watkins had not attempted to use Rule 14.

6. Plaintiffs/Counterdefendants did not notice the parties who had been joined by the fifth amended counterclaim.

WHEREFORE, Plaintiff/Counterdefendants and their attorney should make amends or should be under

scrutiny for sanctions for their attempts to delay and confuse the issues with insincere filings; the Counterclaimants should receive relief from this great burden and be allowed to seek justice through the court system and meet adherence to rules with their own endeavors to follow procedure.

APPENDIX J

[Doc. No. 15 – Filed on Oct 15 09 – by Petitioners]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed October 15, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

MOTION TO REMAND OR
IN THE ALTERNATIVE TO HAVE
ALL CLAIMS REMOVED
TO FEDERAL COURT UNDER 28 U.S.C. § 1367

Come the Counterclaimants' Richard and Connie Watkins for their pro se.....

1. Counterclaimants' fifth amended counterclaim was filed on September 18, 2009.

2. Ten of twenty five Plaintiffs/Counterdefendants filed a notice to remove to federal court on October 2, 2009 on federal questions 'arising from the counterclaim'.

3. Under 28 U.S.C. Sec. 1447(c), defects in removal procedure and a motion to remand is made within 30 days of filing the notice, and is now made, on the basis that it is counterclaimants' responsibility to speak up.

4. Plaintiff/Counterdefendants (PLWC and the City of Paragould) were not compliant with Rule 11. 28 U.S.C. § 1446(a). Truth is the basis of Rule 11 and Plaintiffs' initial complaint was not premised in truth on December 6, 2006 as clearly shown therein and on pages 27-28 of the fifth amended counterclaim in that PLWC knew that the Watkins' trees were not a problem, but based a complaint on false statements. Also:

A) Contrary to Rule 11(b)(1), Plaintiff/ Counterdefendants' removal is for the purpose of harassment, to cause unnecessary delay, and to increase the cost of litigation as supported, by the fifth amended counterclaim and its exhibits, documented proof and circumstantial evidence.

B) According to Rule 11(b)(3) the factual contentions are to have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. The Plaintiff/ Counterdefendants have refused to provide one piece of evidence to support their position even when their position has been challenged by the Watkins' as has been stated in counter motions for summary judgment

has been stated in affidavits and filings in state court: February 25, 2009, February 26, 2009, March, 13, 2009, April 16, 2009, September 18, 2009 and September 21, 2009

C) According to Rule 11(b)(4), 'the denials of factual contentions are to be warranted on the evidence or, if specifically so identified, are to be reasonably based on belief or a lack of information'. Plaintiff/ Counterdefendants' have consistently refused to specify factual contentions, and have made only flat denials of Counterclaimants' allegations supported by substantial proof.

5. Counterclaimants want to be in the right court for the right reason and would be concerned about getting justice if removal is granted with such glaring defects in procedure and jurisdiction. Considering the facts in this case, that: **a)** it is (essentially) the true plaintiffs (PLWC and City) and their attorneys who are removing the case, thus plaintiffs' misrepresentation regarding its party status in the removal notice; **b)** the initial complaint of the true plaintiffs did not show a federal claim; **c)** the time for removal is 30 days after the initial complaint is received by the true defendant and that in a civil matter, the initial pleading is a complaint, which initiates a lawsuit; and **d)** the notice of removal cannot meet the certification requirements of Rule 11 §1446(a)

6. Counterclaimants have no objections to their complete case moving over to Federal Court under § 1367 and having all of counterclaimants claims tried at the same time. Trying claims separately and addressing the exact same sets of evidence time and again, would be a great expense in repeated testimony

from many witnesses from various governmental agencies, all of whom are needed for claims arising from the same nucleus as every other claim, concerning many conspiratorial actions stretching from 2006 to 2009, with as many as twenty of the named counterdefendants participating in actions comprising one claim on several different claims and a variation of one-half of the parties being responsible for many actions causing damage to the Watkins.

7. Counterclaimants had requested the circuit court for at a least one month period for the trial of this 'first impression case for Paragould, Arkansas' in part due to Plaintiff/counterdefendants' refusal to admit to filed documents and their own actions and words that are on record, that show bad faith and prove guilt. The Watkins have a right to the courts of Arkansas to present evidence in a jury trial when government agencies have banded together to remove Watkins's constitutional rights, **a)** of property in destroying trees on their property, **b)** with three false arrests without probable cause against Connie Watkins, **c)** with malicious prosecutions in district and circuit criminal courts, **d)** with malicious governmental conspiratorial convictions involving conflict of interests, and **e)** the forced removal of a sign on which the Watkins were exercising their freedom of speech, to name a few examples, the details of which are contained in the Watkins' fifth counterclaim filed herein. Twenty five parties (government agencies and agents) are liable to the Watkins in §§ 1983, 1985, 1986 claims with appropriate application of §1988.

8. Ten government actors, represented by the Arkansas Municipal League attorney, who are without warrant, calling themselves 'third-party defendants',

and who have filed a notice of removal as 'third party defendants', took deliberate, intentional actions to injure the Watkins, with the exception of one actor who 'neglected to prevent' and 'neglected duty'. They were joined to this case according to Rule 19, because their presence was mandatory and would have been joined by the court according to justice, but the actors might not have showed up.

9. Various combinations of the ten, always two or more of the individuals attempting removal, participated in each action or series of actions cohesively with PLWC agents, that resulted in 54 of the approximately 131 claims in the fifth amended counterclaim. The parties who are attempting removal as 'separate third party individuals', jointly or individually, are named in 80 of the 131 claims in the fifth amended counterclaim with counterdefendants that have not joined to remove. In state or in federal court, this case should go as one.

WHEREFORE, Counterclaimants pray that this case will be kept as one so that justice may be sought more expeditiously at such a time that is right for a trial; that the court raise, on its own the issue of existence of jurisdiction so that time expended in one court will not be duplicated; and that relief will be granted before three more years.

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APPENDIX K

[Doc. No. 16 – Filed on Oct 15 09 – by Petitioners]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed October 15, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

COUNTERCLAIMANTS' DEMAND FOR A JURY TRIAL ON ALL FACTUAL ISSUES IN THE FIFTH AMENDED COUNTERCLAIM

Come now the Counterclaimants Connie Watkins and Richard Watkins *Pro Se*....

1. Counterclaimants filed a fifth amended counterclaim on September18, 2009 in the Greene County Circuit Court in Paragould, Arkansas.

2. On October 2, 2009, ten of the 25 Plaintiff/Counterdefendants filed a notice to remove to federal court.

3. Counterclaimants demand a jury trial on all claims of the counterclaim according to F.R.Civ.P. Rule 38(b) and (d), if the case is removed by Plaintiff, as 'Separate Third Party Defendants'.

4. The Plaintiff/Counterdefendants and all claims asserted in the (counterclaimants') fifth amended counterclaim are so tightly interwoven that justice cannot be served if said parties, all governmental entities or agents of Paragould Light and Water Commission or the City of Paragould, were separated. The conspiratorial actions involving many counterdefendants in one action or series of actions in many situations on many strategic operations to deliberately damage the Watkins as pled with great specificity in the fifth amended counterclaim must stay intact in the name of justice, expedience and economics.

5. In the event this case is removed to federal court, this court would have subject matter jurisdiction over the claims pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C.§ 1367.

WHEREFORE, Counterclaimants pray that state and federal issues be tried together in a jury trial which befits this case, and that all other relief be granted as is suitable and JUST.

APPENDIX L

[Doc. No. 29 – Filed on Nov 04 2009 by Petitioners]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed November 4, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

MOTION TO RECONSIDER: 1) THE COURT'S October 26, 2009 ORDER **(Doc No. 27)**; COUNTERCLAIMANTS' 2) RESPONSE (Objection) To Plaintiff's Motion To Strike... **(Doc. No.8)**; 3) RESPONSE (Objection) To Separate Motion... **(Doc. No. 9)**; 4) OBJECTIONS AND MOTION...**(Doc. No. 13)**; 5) MOTION To Strike Plaintiff/Counter defendants' Insufficient Defenses **(Doc. No. 14)**; 6) MOTION To Remand... **(Doc. No. 15)**; 7) DEMAND For A Trial By A Jury **(Doc. No. 16)**; 8)

OBJECTION AND MOTION To Strike To Bradley Hancock's...(Doc. No. 20); 9) OBJECTION AND MOTION To Strike Frank Crafton, Jake Crafton And Crafton Tree Service's Answers...(Doc. No. 22); 10) MOTION For Leave To Supplement With Timely Objections And Motions Filed In State Court (Doc. No. 24)

Come the counterclaimants, Richard and Connie Watkins, pro se.....

1. The Court has erred in that it never had jurisdiction in this matter and the Court's Order affects the Watkins' substantial rights by removing valid claims that asserted constitutional violations which have great amounts of substantiating evidence and for which counterdefendants have no defense and have produced no contradictory evidence. The Watkins are inflicted with immediate injury from the dismissal of their claims that have not been adjudicated and suffer further violation of due process. All people are to have access to the courts and not have their substantial evidence discarded before being heard on matters affecting basic rights of property and liberty. Damage by this court has been levied against the Watkins without consideration of the facts of the case and this demonstrates plain error. Because the district court lacked jurisdiction over the action, it could not rule on the merits of the Watkins' claims under the statutes and within the Code.

2. Reconsideration of the Court's October 26, 2009 ORDER on several principal grounds, all of which were put before the Court by the Watkins with motions, responses and objections and which, at this time are

also the subject of requested review and reconsideration due to their dismissal.

3. The Watkins properly joined and served, twenty-three necessary parties according to Rule 19, with their Fifth Amended Counterclaim in September 2009, resulting in a total of twenty-four principal actors (counterdefendants), including the entities of City of Paragould and Paragould Light and Water Commission (PLWC hereafter), the original Plaintiff in December 2006.

4. A motion to strike (Doc. No. 5) was filed on September 25, 2009 in state court by eight individual counterdefendants who did not join to remove to federal court. Also a motion to strike (Doc. No. 6) was filed in state court on September 25, 2009 by Plaintiff PLWC and the City of Paragould, who also did not join to remove to federal court. Both filings (Doc. Nos. 5 and 6) asserted that the Watkins had relied upon Rule 14 and had violated Rule 12, and Document 5 introduced the term 'third party' into the case for the first time, labeling eight of Plaintiff's employees who were principal actors in the case as 'third party defendants'. There is no indication in the record that Bill Fisher, Darrell Phillips, Bill McCartney, Frank Curtis, John White, Larry Bobbitt, Daniel Wilkerson, the City of Paragould or PLWC even hinted that they agreed to removal or were joining the removal. A statement is required for removal.

5. The Watkins responded to 5 and 6 with objections (**Doc. Nos. 9 and 8** respectively), realigning the parties, demonstrating that there were no 'third-party defendants' in this case, and no grounds for striking the fifth amended counterclaim. The Watkins'

responses to the non removing parties' motions contained the specificity required to refute the Counterdefendants' misrepresentations of premise in the Watkins' filing of the fifth amended counterclaim, yet the pertinent material presented by the Watkins was not given weight.

6. According to Rule 12(f) the court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter on its own or on motion by a party, and under Rule 12(d) the Watkins presented argument that was sufficient to strike, with material that is pertinent to the motion, but Watkins' motion (**Doc. No. 14**) was denied.

7. The Court's ORDER (Doc. No. 27) stated as 'pending' only two motions (Doc. Nos. 5 and 6). The ORDER relies in great part on its assertion of a violation of Rule 14 which is also the basis for the argument in both 5 and 6 that 'the fifth amended counterclaim should be stricken'. It was an error for the Court to grant 5 and 6 to strike the Fifth Amended Counterclaim on the motions of parties who had not joined in the removal. The court ruled while lacking original jurisdiction, personal jurisdiction, or subject matter jurisdiction.

8. The ten parties who did 'remove' made no arguments to support the frail, barely visible request that the counterclaim be dismissed, attached in the 'Wherefore' of their answer to the fifth amended counterclaim (Doc. No. 2). On that additional ground, the striking of the fifth amended counterclaim was not fair. Argument, law and support were completely absent.

9. It is an error for the Court to make a ruling against the Watkins on Rule 14, because the Watkins had consciously avoided use of inapplicable Rule 14 in the filing of the Fifth Amended Counterclaim. The Watkins had thoroughly refuted the false assertions that accompanied the purposeful confusion of parties by Plaintiff/counterdefendants(Doc. Nos. 1, 2, 5, 6) with Watkins' own responses, objections and motions **(Doc. Nos. 8, 9, 13, 14, 20, 21)**. It was an error for the Court to recite in its ORDER against the Watkins, the frivolous argument of Plaintiff/Counterdefendants (Doc. Nos. 5,6) in disregard of the strongly supported responses, objections and motions of the Watkins, that were based in case law and in the removal statutes that are to be strictly applied and with a demand for a jury **(Doc. No. 16)** in place.

10. The Court additionally stated in its ORDER 27 that the Fifth Amended Counterclaim "attempts to add claims that appear to have either been previously ruled upon by the Greene County Circuit Court, barred by statute, or barred by the *Rooker-Feldman* doctrine". On the first point, the Court referred to a March 4, 2009 order by the Circuit Court which made premature judgment, on an issue that is on direct appeal in the Court of Appeals, which cannot be disposed of, and on issues for which the Watkins have abundant substantiating evidence that had been provided to the Court as was demonstrated with prior and subsequent submissions to the court including a March 12, 2009 Motion to Reconsider and a March 13, 2009 Motion for an Evidentiary Hearing. Further, Plaintiff attempted on September 8, 2009 to gain summary judgment with a Petition for Reconsideration for Partial Summary Judgment which the Counterclaimants met Plaintiff's general vague

assertions and false statements with counter proof and references to evidence in the record and according to rules and case law, and also filed their Fifth Amended Counterclaim. Plaintiff/Counterdefendants should not be granted any type of judgment in their baseless claims. On the second point, the Court references the fact that 42 U.S.C. § 1986 has a 1-year statute of limitations. That is a fact that the Watkins do not deny, however, because of the nature of this U.S. Code involving 'an actor's knowledge and power to prevent or aid in preventing wrongful conspiracy' and the fact that the same counterdefendants continue with the course set in 2006 to injure the Watkins, IF any counterdefendant would be eliminated by the statute of limitations, it would be two or three of the actors who did not join 'the removal'. The Watkins' valid claims deserve at least a 'court hearing' with the presentation of facts, as preserved in state court for three years, and as the 'partial judgments' were not final against relief of damages. Concerning the third point, the *Rooker-Feldman* doctrine simply does not apply in this case. There are no challenges to state court judgments that would cause the Watkins' Fifth Amended Counterclaim to the struck in federal court. The Watkins claims have not been heard in state court. There is no res judicata issue in this case.

11. The Court cited no facts presented by the Watkins and none of the many supporting case laws included in their arguments. It was an error for the Court to rule against the Watkins on the above three points, disregarding facts available for finding in the Watkins' favor and not examining the claims asserted by the Watkins to find conclusions of law to result in justice according to the evidence that has been filed in state court and federal court. The Watkins valid claims

by law should receive the consideration allowed under Federal Rules of Civil Procedure Rule 52(a)(1) wherein the court must find the facts specially and state its conclusions of law separately in making an order disposing of Watkins' materially supported claims and allegations that remain uncontradicted other than by general categorical unsubstantiated denials in the face of challenges to the plaintiff/counterdefendants to produce evidence.

12. Ten counterdefendants, all agents of the City of Paragould, labeling themselves as 'Separate Third Party Defendants' and the Watkins as both 'Plaintiffs' and 'Third Party Plaintiff', came on October 2, 2009 with a Notice To Remove (Doc. No. 1), and made the expected but false defense of *res judicata* and other available doctrines, presenting no reason that the fifth amended counterclaim should be dismissed, but yet closed with a 'one liner request' that 'Plaintiff's Complaint be dismissed with prejudice' in an attached 'Answer to the Fifth Amended Counterclaim' (Doc. No. 2). Counterclaimants' response to 2, filed on October 9, 2009 in state court and as a supplement in federal court on October 22, 2009 **(Doc. No. 24)**, contained an objection to the weak motion to dismiss and notice of insufficient answers according to Rule 8 and Rule 12. It was an error for the Court to grant, whether or not, 24 was considered.

13. The Watkins had made no use of the third party rule (Rule 14) or cross claims, as thoroughly explained in the Watkins' objection and motion filed on October 15, 2009 **(Doc No. 13)**, which was a direct response to the notice of removal 1, as it was noted on the docket text.

14. The wording of Rule 14's 'third party' restrictive application in addition to 'cross-complaint' was deceitfully adopted and interjected into this case by certain adversaries/Plaintiff/Counterdefendants who sought collateral advantage with delay and confusion in the courts and to disadvantage the Watkins with attempt to fault the Watkins' 'proper joining and serving of parties required as a matter of justice'. The Court would inevitably be confused as to the parties and their rights to remove the case.

15. In attempt to show jurisdiction, the Ten Removers pointed to 'federal question' which arises from the Watkins' counterclaim and not from the Plaintiff's original complaint that had been filed in 2006. The ten Counterdefendants, through their attorney, referred in general to Watkins' counterclaims against the government actors and asserted entitlement to removal on 'original jurisdiction' in their removal notice (Doc. No. 1). The ten removers' NOTICE OF REMOVAL wrongly aligned parties and the ten were labeled 'Separate Third Party Defendants'.

16. Counterdefendants Mike Gaskill, J.D. Stephenson, Todd Stovall, Monty Martin, Mike Tinnin, Jaree Johnson, Phillip Faulkner, Dennis Dunn, Kimberly Dale and Allen Warmath, in their individual capacities, through counsel filed their notice of removal with no individual signatures or statements, but as a group of ten individuals, and have not specifically denied any of the detailed allegations, and have not pointed to their particular relation to the transaction which gave rise to the suit, nor have they shown that their relationship to the Watkins derived solely from their official duties. The ten removing

Counterdefendants did not enter responsive affidavits in attempt to assert jurisdiction as required when contested, as by the Watkins' 13.

17. The Court erred when it did not consider the valid points and arguments in the Watkins' **(Doc. No. 13)** which on its face stated: 1)'Objection to Plaintiffs' Attempts to Change Principal Parties into Third Party Defendants', 2) Objection to Jurisdictional Basis and Procedure in Filing of Plaintiffs' Notice of Removal as Separate Third Party Defendants, 3) Objection to Plaintiff's Representation Regarding Its Party Status in the Removal Notice, and 4) Motion for Review of Plaintiff's Representation Regarding Its Party Status in the Removal Notice.).

18. Counterclaimants' 13 contested the legitimacy of the removal, declared procedural and jurisdictional defect, demonstrated the wrongful claims of party status and suggested the realignment of parties, addressed the fact that parties 'removing' were involved in claims jointly with parties who were 'not removing', demonstrated the lack of jurisdiction on several grounds and incorrect interpretation of removal statutes and pointed to the "presumption against removal jurisdiction" and the requirement to "strictly construe the federal removal statute and resolve all doubt in favor of remand." The Watkins supported each ground with removal statutes and case law in a supporting brief.

19. The Court erred in not ruling on 13 and not giving it weight. No consideration was given to the question of jurisdiction raised by the counterclaimants. Rule 12(d) and 28 U.S.C. § 1447(c) allow for consideration of the Watkins' arguments and motion,

that stated, with proof, that this Court lacked jurisdiction. A 'ruling with a statement' is requested, for the record.

20. The Court's ORDER failed to specify the Sections in the removal statutes that it evoked in its decision that original jurisdiction existed in December 2006 when the Plaintiff first filed its complaint.

21. The parties who removed to federal court would not have been able to file their original complaint in federal court, would not have been able to remove within the first thirty days of Plaintiff's filing its complaint in state court and did not attempt to remove to federal court upon the filing of counterclaimants' fourth amended counterclaim in October 2008 which named the same parties, minus a couple whose actions matured for suit in 2009.

22. No rules should be misapplied against the Watkins when the case was fraudulently removed and lacked the 'original jurisdiction' claimed by the parties not at liberty to remove. Clear error occurred.

23. The Watkins' Fifth Amended Counterclaim demonstrates the total lack of truth in Plaintiff PLWC's original complaint, which was originally filed in State court in December 2006 and which stated no federal cause of action against the Watkins. The injunction Plaintiff sought in its complaint arose out of fraud and attempt to cover Plaintiff's crimes against the Watkins.

24. The district courts of the United States had no original jurisdiction over this case.

25. The Watkins' Fifth Amended Counterclaim demonstrates, with accompanying proof of uncontradicted facts and documentation, Constitutional basis for each claim.

26. In denying the motions of Counterclaimants and granting unsubstantiated motions of Counterdefendants who did not remove, the District Court abused its discretion and/ or erred in failing to consider or give weight to "the values of economy, convenience, fairness, comity, and the apparent attempt of Plaintiff/Counterdefendants to manipulate the forum".

27. Counterclaimants' Motion to Remand **(Doc. No. 15)** was treated primarily as a motion to have all claims removed to Federal Court, though the 'motion to move all claims' was in the alternative and followed arguments demonstrating the defects in removal procedure and facts of Counterdefendants' noncompliance with 28 U.S.C. §1446(a) and/or Rule 11.

28. The Court granted the motion of the group of eight (above 4.) though it did not rule on a duplicate of that motion by another party, Counterclaimant Bradley Hancock (Doc. No. 12), who in parallel with the eight, did not join in the removal, and who also nonetheless filed his answer to the Fifth Amended Counterclaim in federal court. The Court erred in being inconsistent, and allowing its inconsistency to damage the Watkins' right to seek damages in civil court for violations of rights. Granting insufficient motions against the Watkins' whose responses met and challenged the false statements in the motions, when not ruling on Hancock's motion, is a clear error and should be corrected This illustrates that the case

should not have been touched outside of the forum chosen by the Plaintiff long ago where it had jurisdiction and was being kept intact, to a certain degree.

29. In addition to the eight individuals named above, Brad Hancock, and entities PLWC and the City of Paragould, there were four other parties who did not join in the removal: Counterdefendants Jake Crafton, Frank Crafton, Crafton Tree Service and Randy Philhours did not join to remove the case to federal court. The court erred when it struck the Watkins' Fifth Amended Counterclaim without jurisdiction or reason when a great number of issues and valid federal claims are so dependant on the counterclaim. Justice requires reconsideration.

WHEREFORE, the counterclaimants pray to object to error, plain error, and error that is not harmless and/ or abuse of discretion that has affected our substantial rights and need the Court to correct a clear error of law to prevent manifest injustice pursuant to Rule 51, Rule 52(a)(5) and (6), Rule 52(b) and (c), Rule 53(g)(1)-(2), 60(a), or any Rule of Civil Procedure that allows for correction. The Watkins at this time question the sufficiency of the evidence supporting the findings and conclusions of law in the October 26, 2009 ORDER, and request that findings that cannot be supported by findings of fact, removal statute and conclusions of law, be amended or set aside; that according to Rule 60(b)(3)(4) and (6), or 60(d)(1) and (3) due to the misrepresentation and manipulation of facts by the opposing parties in removal, the Watkins should have opportunity to demonstrate the fraud from which this case originated; that the rulings on the Watkins' motions filed in this court and the

October 26th, 2009 ORDER in this case should be corrected as truth was laid out herein according to the Rules of Federal Procedure, removal statutes, and justice so that in state court their case will not be disabled; that this case should be remanded to state court with its Fifth Amended Counterclaim intact; and that Plaintiff/Counterdefendants take nothing with their dirty hands.

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[Doc No. 30 – Filed Nov 04 09-
BRIEF IN SUPPORT OF [Doc. No. 29]
Motion to reconsider]

In *Hunt v. Lamb*, 427 F.3d 725 (U.S.C. Court of Appeals, Tenth Circuit, 2005), a district court, with an order had dismissed a complaint under the *Rooker-Feldman* and *Younger* doctrines. Because this case was improvidently removed from state court, the federal district court's only option was to remand. The court vacated the dismissal order, remanded the case to the district court, and instructed the district court to remand the case to state court.

"In *Bell Atlantic Corp v. Twombly*, 550 U.S. 544 (2007), the court held that to survive a 12(b)(6) motion, a complaint need not contain detailed factual allegations, but it must plead "enough facts to state a claim for relief that is plausible on its face."" The Watkins have met all requirements to show that their case should not be discarded carelessly.

"A party joined by a counterclaim is not permitted by 28 U.S.C.A. § 1441(a) to remove a case from state court to federal court." *Palisades Collections, LLV. v.*

Charlene Shorts v. AT&T Mobility, LLC; ATT&T Mobility Corporation.

"But just as a third-party has no special rights to remove, neither does a nonplaintiff-counterdefendant. A counterdefendant is not a defendant joined in the original action and therefore not party that can remove a state action to federal court." *Dartmouth Plan Inc. v. Delgato*, 736 F. Supp. 1489, 1392 (N.D. ILL. 1990).

"...federal jurisdiction cannot be invoked on the basis of a defense or counterclaim. A litigant files a state law claim in state court, and the opponent parries with a federal counterclaim, the action is not removable to federal court, even though it would have been removable had the order of filings been reversed. . ." *Holmes Group, Inc. v. Vorando Air Circulation Systems, Inc.*, 535 U.S. 826 (2002). *Vaden V. Discover Bank*, -- U.s. --, 129 S.Ct. 1262 (2009)

In interpreting the statutory language, we are mindful that the statutes conferring removal jurisdiction are to be construed strictly because removal jurisdiction encroaches on state court's jurisdiction. See Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941). Thus, in the interest of comity and federalism, federal jurisdiction should be exercised only when it is clearly established, and any ambiguity regarding the scope of 1446(b) should be resolved in favor of remand to the state courts. *Manguno v. Prudential Property and Cas. Ins. Co.*, 176 F.3d 720, 723 (5th Cir. 2002).

"Under the rule of unanimity, ordinarily all defendants must join in a notice of removal or the case will be remanded. *Chicago, Rock Island, & Pac. Ry. v.*

Martin, 178 U.S. 245, 251 (1900); *Bradley v. Md. Cas., Co.*, 382 F.2d 415, 419 (8th Cir. 1967). Although the statute does not explicitly require that all defendants join the removal petition, under the "rule of unanimity," in multiple defendant cases "all must join in the removal petition." Lewis v. Rego Co., 757 F.2d 66, 68 (3d. Cir. 1985)."

The U.S. Supreme Court, in *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 122 S. Ct. 1889, 153 L. Ed. 2d 13 (2002), issued a landmark decision on "arising under" jurisdiction of the federal courts. The action was not based on a federal law but the defendant's counterclaim, in which it invoked federal patent law to allege patent infringement by the plaintiff, seemed to give the court "arising under" jurisdiction. The Court thought otherwise, ruling that the counterclaim did not confer federal jurisdiction, vacated the District Court's judgment and remanded the case.

"We therefore hold this case controlled by the general rule that if federal subject-matter jurisdiction is absent at the time of the original removal petition, the case must be remanded to state court. *Npsa Service Corporation v. Independent American Savings Association, FSLA Et. Al.* 868 F.2d 1415 U.S. Court of Appeals. Fifth Circuit. (1989)."

The plain language of Sec.1447(c) gives "no discretion to dismiss rather than remand an action" removed from state court over which the court lacks subject-matter jurisdiction. *International Primate Protection Lœague v. Administrators of Tulane Educational Fund*, 500 U.S. 72, 89, 111 S.Ct. 1700,

1710, 114 L.Ed.2d 134 (1991) (internal quotation marks omitted)."

"Applying the above principles, it is evident that the district court erred by dismissing the action rather than remanding. The Eleventh Amendment prevented the district court from exercising subject-matter jurisdiction over Roach's claims. Therefore, Sec. 1447(c) required the court to remand the action to state court. See Smith, 23 F.3d at 1140; Henry v. Metropolitan Sewer Dist., 922 F.2d 332, 338 (6th Cir.1990)."

"First, because the district court lacked jurisdiction over the action, it could not rule on the merits of the claim. See *Bell v. Hood*, 327 U.S. 678, 682, 66 S.Ct. 773, 776, 90 L.Ed. 939 (1946); *Smith*, 23 F.3d at 1139 n. 10; Henry, 922 F.2d at 338; cf. *Goldsmith v. Mayor & City Council of Baltimore*, 845 F.2d 61, 64 (4th Cir.1988) ("A federal court must satisfy itself that it has jurisdictional power to rule on the merits of a case.")."

"Under 28 U.S.C. § 1441(a), a defendant in a state court civil action may remove the action to federal court if the federal court has original jurisdiction over the action. Removal is reserved for those cases "that originally could have been filed in federal court." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). "This jurisdictional prerequisite to removal is an absolute, non-waivable requirement." *Brown v. Francis*, 75 F.3d 860, 864 (3d Cir.1996)."

"Because Plaintiff/Counterdefenants could not have initiated this action in federal court,

Counterdefendants joined by the fifth amended counterclaim could not remove it to federal court. As the district court lacked jurisdiction over the state case, it was required by 28 U.S.C. § 1447(c) to remand the action to state court.. "*See Brown,* 75 F.3d at 866 (stating that a court may not "exercise authority over a case for which it does not have subject matter jurisdiction"); *Fent v. Okla. Water Res. Bd.*, 235 F.3d 553, 557-58 (10th Cir.2000) (stating that "§ 1447(c) gives no discretion to dismiss rather than remand an action removed from state court over which the court lacks subject-matter jurisdiction") (quotation marks omitted)."

To the extent that the Watkins still seek vindication to violations of their civil and constitutional rights, remand was required.

"Generally speaking, "a case may not be removed to federal court solely because of a defense or counterclaim arises under federal law." *Topeka Hous. Auth. v. Johnson,* 404 F.3d 1245, 1247 (10th Cir.2005)."

The parties have no power to confer jurisdiction on the district court by agreement or consent. *Sullivan v. First Affiliated Securities, Inc.*, 813 F.2d 1368, 1374 (9th Cir.), cert. denied, --- U.S. ----, 108 S.Ct. 150, 98 L.Ed.2d 106 (1987)

"The *Morongo* decision goes on to state that, if jurisdiction was lacking, orders issued thereafter are "nullities." *Morongo Band of Mission Indians v. Cal. St. Bd. of Equal.*, 858 F.2d 1380 (9th Cir. 1988)"

Rule 46 allows an objection to a ruling or order.

Under Rule 52(a)(1)(2)(4)(5)(6) findings and conclusions by the Court must be based on facts and law, a party may later question the sufficiency of the evidence supporting the findings and the findings may be set aside if clearly erroneous with the reviewing court giving due regard to the trial court's opportunity to judge the witnesses' credibility. In this case, however, all credibility was given to the general defenses that are expected and allowed by the court on the part of the counterdefendants (Doc. Nos. 1, 2, 5, 6) and no credibility was given to the Watkins' arguments and evidence entered with detailed specificity in their fifth amended counterclaim and brief in support (Doc. No. 4) filed on September 18, 2009, their objections, motions and responses filed in federal court, Docket Numbers 10, 13, 14, 15, 16, 17, 20, 21, 22, 23 and 24, or their pleadings that were part of the record brought from state court.

"A motion to reconsider is available to correct manifest errors of law and fact, or to present newly discovered evidence. Wolves v. National Railroad Passenger Corp., 1990 WL 84519, at *1 (N.D. Ill. 1990) (not reported in F. Supp.) (citing Publisher's Resource Inc. v. Walker-David Publications, Inc., 726 F.2d 557, 561 (7th Cir. 1985))"

"A motion to reconsider a remand order is proper "where the court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, which made an error not of reasoning but of apprehension." Calderon, 56 F.Supp. 2d at 999 (citing Bank of Waunake v. Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir. 1990))."

"28 U.S.C. § 1447(c), authorizes remands based on a defect in the removal or on a lack of subject matter jurisdiction. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711-12 (1996)."

"A plea attacking the jurisdiction of the federal court will be treated as a motion to remand. Poorman v. Ry. Co., 255 Fed. 987."

"The plain error standard is met if a party establishes that "'(1) an error was committed;(2) the error was plain, or clear, or obvious; and (3) the error resulted in material prejudice to substantial rights.'" United States v. Maynard, 66 M.J. 242, 244 (C.A.A.F. 2008) (quoting United States v. Hardison, 64 M.J. 279, 281 (C.A.A.F. 2007)). "Once [the party] meets his burden of establishing plain error, the burden shifts to the Government to convince us that this constitutional error was harmless beyond a reasonable doubt." Carter, 61 M.J. at 33 (citing United States v. Carpenter, 51 M.J. 393, 396 (C.A.A.F. 1999))."

"The Supreme Court has emphasized that "'[p]lain error' review under Rule 51 is suited to correcting *obvious* instances of injustice or misapplied law." *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 256 (1981) (emphasis added)."

"Rule 36 permits the Court "at any time [to] correct a clerical error in a judgment, order, or other part of the record."

"Courts have long recognized "inherent equitable powers of courts of law over their own process, to prevent abuses, oppression, and injustices." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35,104 S. Ct.

2199, 2209 (1984) (internal quotations omitted). It seems beyond debate that those inherent powers must include a judge's power to correct his own mistakes in at least some circumstances."

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APPENDIX M

[Doc. No. 31 – Filed Nov 04 09]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed November 4, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

MOTION TO REQUEST RULING ON 'COUNTERCLAIMANTS' OBJECTION TO PLAINTIFFS' ATTEMPTS TO CHANGE PRINCIPAL PARTIES INTO THIRD PARTY DEFENDANTS AND OBJECTION TO JURISDICTIONAL BASIS AND PROCEDURE IN FILING OF PLAINTIFFS' NOTICE OF REMOVAL AS SEPARATE THIRD PARTY DEFENDANTS, AND OBJECTION TO, AND 'MOTION FOR REVIEW OF' PLAINTIFFS'

REPRESENTATION REGARDING ITS PARTY STATUS IN THE REMOVAL NOTICE'
(Doc. No. 13)

Come now the counterclaimants Connie Watkins and Richard Watkins *Pro Se*.....

1. On October 26, 2009, the District Court entered an ORDER which recognized as pending, two motions made by Plaintiff/Counterdefendants (Doc. Nos. 5, 6) and noted that Defendants had responded (Doc. Nos. 8, 9).

2. The ORDER denied four of the Watkins' five motions (Doc. Nos. 10, 14, 15, 19, 24), but did not address or rule on the other one (Doc. No. 13) (above in title).

3. The docket noted that 13 was responsive to Plaintiff/Counterdefendants' notice of removal. The response contained objections to Plaintiffs' posturing with false status to manipulate the courts, objections to principals' abuse of process and defective procedure in notice of removal and a Motion for review of Plaintiff's representation in the removal notice.

4. The motion (Doc. No. 13) demonstrated to the court that Plaintiff/Counterdefendants, City of Paragould, Paragould Light and Water Commission (PLWC) and their agents should not be allowed to remove because § 1331 requires that the federal question appear on the face of their original complaint and the complaint they filed in December 2006, against the Watkins presented no federal question.

5. The Watkins' motion addressed issues of the period of time that would have allowed for removal, the fact that the Watkins were the only party that owned the right of removal under 28 U.S.C. §§ 1441(a) and 1446(a) and that they were prohibited from removing because though the counterclaim is full of federal issues, the 'initial pleading', not a counterclaim, is to provide the federal question to allow jurisdiction. The counterclaim was not to be used by the Watkins to remove and was wrongly used by certain counterdefendants in the removal.

6. The counterclaimants also explained to the Court in 13 that parties had been joined and served under Rule 19(a), (not Rule 14), and that the Fifth Amended Counterclaim included many claims against principal parties (all acting under color of law) whose intentional actions outside the scope of their duties had damaged the Watkins and were liable under 42 U.S.C. §§ 1983, 1985, 1986 and 1988.

7. The motion stated (¶26) that the removing party bears the burden of proving the existence of Federal Jurisdiction and that removal was defective under 28 U.S.C. §§ 1331, 1441 and 1446.

8. The motion explained that many claims had matured for inclusion in the Fifth Amended Counterclaim that continue from the same basis of activity and policy as the original actions by Plaintiff and that all claims are interwoven and cannot be pulled apart without great injustice to the counterclaimants and taxpayers.

9. The fact that certain counterdefendants had 'removed' and that others did not was noted in the

motion which was disregarded, along with the fact that although over 20 counterdefendants were joined with service of the Fifth Amended Counterclaim, some did not follow the two groups which took up the title of 'third party' and PLWC which from the beginning had called itself plaintiff, in federal court was labeled "Third-Party Defendant.

10. In the 'brief in support' many precedent case laws were provided. When the Watkins became aware that briefs in support were to be separate, they asked the court if they would be allowed to correct and comply with form, but were instructed that they would be notified if that was a problem.

WHEREFORE, the Watkins pray that a ruling be rendered on their objections and Motion for Review of Plaintiffs' Representation Regarding its Party Status in the Removal Notice, showing that the removal to federal court was defective and should have been denied and the case remanded intact to State Court on the grounds that justice be served and preserved, and that relief be granted as is just according to the fifth amended counterclaim.

.....

APPENDIX N

[Doc. No. 32 – Filed Nov 04 09 – by Petitioners In The United States District Court Eastern District Of Arkansas Jonesboro Division – Petitioner's Brief in Support of Doc. No. 31]

[Filed November 4, 2009]

..... In Part

"Under Federal Rules of Civil Procedure Rule 12(d), the court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record."

"Rule 36, which permits the Court "at any time [to] correct a clerical error in a judgment, order, or other part of the record."

28 U.S.C. § 1447(c) allows for consideration of the Watkins' arguments and motion, which contested the legitimacy of the removal, declared procedural and jurisdictional defect, demonstrated the wrongful claims of party status, suggested the realignment of parties, and addressed the fact that parties 'removing' were involved in claims jointly with parties who were 'not removing'.

"The crux of the tort of abuse of process, whether civil or criminal, lies in the malicious abuse or misuse of a process or writ which has been lawfully and properly issued. See *Mullins v. Sanders*, 1949, 189 Va. 624, 54 S.E. 2d 116."

All citizens are to have access to the courts and to be able to file motions, responses and objections in a case involving property and liberties. The Watkins filed timely and they have the right to expect that the Court will deal fairly with their statements of fact and that theirs will have the same weight as the adversaries' filings.

.....

APPENDIX O

[Doc. No. 37 – Filed Nov 20 09 by Petitioner]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed November 20, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

MOTION TO SET ASIDE THE JUDGMENT BASED ON FRAUD FEDERAL RULE 60(B)(3)(6) AND 60(D)(3)

Come now the counterclaimants Connie Watkins and Richard Watkins *Pro Se*.....

1. As laid out in Counterclaimants' Fifth Amended Counterclaim, pleadings in Federal court, exhibits attached to pleadings filed in Circuit court and

exhibits attached to the counterclaim, all filings in this case by Plaintiff/Counterdefendants are fraudulent.

2. Pursuant to Federal Rules of Civil Procedure 60(b) and 60(d)(3) the orders against the Watkins should be set aside as void as fraud on the part of Counterdefendants was practiced with every aspect of this case and to great harm against Mr. and Mrs. Watkins.

3. Fraud was committed on the court by Paragould Light and Water Commission (PLWC) and the City of Paragould, Plaintiffs/Counterdefendants, because the complete premise for police action against Connie Watkins on November 28, 2006, was a baseless, malicious conspiracy: **a)** there were no trees that needed to be trimmed on or around the Watkins' property, as shown in the record in Federal Court, Document 1-6 pages 46 & 47 and Document 1-8 pages 16, 17 and 18; **b)** PLWC persuaded Mayor Mike Gaskill and Chief of Police Stephenson to join their agenda against Connie Watkins and the Watkins' property as shown below; and **c)** the original complaint filed against the Watkins was a frivolous, baseless decoy to cover crimes against the Watkins and every filing by PLWC, the City of Paragould and their agents, every allegation, every court date set, is an abuse of process based on fraudulent documents as clearly shown and substantiated by the record (Document 1-2 page 42, and on).

4. Exhibits attached to the original complaint included fraudulent documents and court filings to deceive the courts. Exhibits "A", "B" and "C" of the original complaint show only Connie Watkins' ownership of Lot 29. Exhibit "D" is a fraudulent survey

as illustrated in the Fifth Amended Counterclaim, ¶¶ 40, 41, 42 (Document 1-2 pages 16 & 17), and ¶ 180 (Document 1-2 page 67). Exhibit "E"1, "E"2 has no relation to the original complaint and no bearing on the Watkins property, but was used to tout false authority. Exhibit "E"3 was altered by someone other than the surveyor, Eric Coleman, before being attached as an exhibit. A clear, certified copy of Eric Coleman's survey is attached, here, as **EXHIBIT A**. Plaintiff's Exhibit "F" has no relation to or bearing on this case and was attached to the original complaint to deter the issues and prejudice the courts. "F" was an order for non-suit as pursued by Connie Watkins in a legitimate 2002 suit against Paragould Light and Water Commission (PLWC) on issues totally independent of any counterclaims filed in this case, therefore, there has been no valid res judicata issues in this case. The final exhibit in the plaintiff's original complaint, Exhibit "G" 1, was a self-serving baseless letter written by PLWC's attorney to intimidate Connie Watkins after she had voiced a complaint against damage by the commission's employees to the Watkins' property.

5. None of the Plaintiff's exhibits in its original complaint raise federal issues. The case could not have been filed in Federal Court. The case could not later be removed, legitimately to Federal Court. All judgments made in Federal court should be void. (Doc. Nos. 8, 9, 15, 24, 29, 31 and 33).

6. The 'removers to federal court' did not submit to Federal Court a true and correct copy of the original complaint that had been filed in Circuit Court on December 6, 2006. Counterclaimants made a motion on November 4, 2009 that Counterdefendants be

demanded to correct the record by supplying the true page ten, but the motion was denied. Therefore the Watkins have on the date of the filing of this document, supplemented the record with a true copy so that page ten of the original complaint will be part of this court's record.

7. Plaintiff, having great motive to convict Mrs. Watkins, that being to destroy the Watkins' lawsuit against the city, worked closely with dual capacitied City Attorney/Deputy Prosecuting Attorney Kimberly Dale who overzealously and knowingly, falsely prosecuted and convicted Mrs. Watkins to cover city crimes.

8. Prosecutor Dale and the Paragould Police Department suppressed, stifled and destroyed evidence that would have demonstrated the great conspiracy against the rights of a framed citizen. (Document 1-2 pages 54, 55, 71, 80, and 82)

9. New evidence of blatant fraud worked against the Watkins by the governmental actors named and joined in this case continues to turn up.

10. On September 23, 2009, only after the Fifth Amended Counterclaim was filed on September 18, 2009, the Watkins were allowed to look through an alleged 'complete file' in the office of Kimberly Dale, who had not been forthcoming with documents though specific requests had been made according to FOIA.

11. There were no statements in Dale's file by any officer or person that indicated criminal action on the part of Connie Watkins on November 28, 2006. There were no notes of discussion of any wrongdoing

on the part of Connie Watkins. The Watkins observed writing in the hand of Kimberly Dale which noted some of the vehicles that drove to the Watkins' home on November 28, 2006, but Dale's file contained not one note pertaining to the many wild statements she had made in criminal court against Connie Watkins on September 16, 2008. The FOIA sent to Dale on August 26, 2009 is attached **Exhibit B.** Nothing was provided that supported the evil defamatory private pre-trial bench session that excluded Connie Watkins, during which Dale stated most of the false statements in Exhibit B.

12. Dale had in her possession a copy of the November 9, 2006 letters (Document 1-6 pages 38, 39, 40, 41, 42, 43, 44, 45) bearing the names of four PLWC employees/counterdefendants. The letters are referenced in PLWC attorney's November 16, 2006 letter in which Mr. Hamilton addressed the subject of 'taking Mrs. Watkins to court', just prior to her arrest (Document 1-6 page 46).

13. Records in Dale's file on September 23, 2009 and that were written in Dale's own hand, demonstrated Dale's knowledge that she had deliberately led Jake Crafton to give false testimony on the stand that caused the conviction of Connie Watkins.

14. Jake Crafton has been identified as the author of one of the defamatory November 9, 2006 letters (Document 1-7 page 48, 49, 50, 51), allegedly written by PLWC employees. All of the letters are suspect with the shared pages, handwriting and contradictions within the writings and the denial by Connie Watkins of allegations contained in the letters.

15. Dale prosecuted Mrs. Watkins with a vengeance although possessing no evidence. Dale led all three of the witnesses to make claims against Mrs. Watkins which were in opposition to the official police records including the police tape recorded by Officer Jaree Johnson and arrest reports by Officer Mike Tinnin as demonstrated in the fifth amended counterclaim.

16. Kimberly Dale led Jaree Johnson to falsely testify that she, Johnson, was the arresting officer (Document 1-9 pages 70, 71, 72). Dale had in her 'file diary' information that Mike Tinnin had been the arresting officer (**EXHIBIT C**), in addition to Tinnin's official arrest report, which would have put the arrest AFTER the trumped up allegation that Mrs. Watkins struck Officer Johnson on the wrist. The arrest tape shows that Johnson made the claim of a strike as Johnson was taking the arrested Mrs. Watkins to Johnson's car for transport to the city lockup (Document 1-6 pages 57 & 58).

17. Dale led Jake Crafton to state that Mrs. Watkins had 'come at him' Exhibit attached' **T 333**, charged at him and at his workers, after Crafton had been testifying and had alleged cursing, but had not indicated any running or charging (Document 1-10 page 64). Dale encouraged Crafton to state that Mrs. Watkins was 'doing something with her arms' (Document 1-10 page 65) though there was testimony that Mrs. Watkins had her arms full of exhibits to show the officers about the prior tree damage.

18. Dale led Officer Tinnin to testify that there were 'neighbors and other people around' Exhibit

attached T 259, and that Mrs. Watkins had exhibited 'escalating behavior (Document 1-10 page 28).

19. At the time Dale was prosecuting Connie Watkins, Dale was working for the City of Paragould Arkansas as City Attorney. The Watkins had a million dollar lawsuit against the city while Dale was prosecuting Mrs. Watkins. This was a definite conflict of interest.

20. The Watkins have had no opportunity for a hearing or litigation on the merits of any matter in this civil case. The fraud perpetrated in this case is explained in Document 3-6 page 22, as well as throughout each page of the Fifth Amended Counterclaim.

21. Officer Tinnin testified on September 16, 2008 that he had been called by his lieutenant the night prior to November 28, 2006, that the lieutenant had told him that a situation was going on, that PLWC had 'came, talked to the chief, the mayor, whoever, that they had all their paperwork, everything they needed to go in and get this job done (Document 1-10 page 23), that on the scene, a PLWC representative 'went through prior problems that they had had with Mrs. Watkins' (Document 1-10 page 26), that he, Tinnin, was at the scene relying on what a superior had told him to do (Document 1-10 page 36), that facts at the scene were not important to him because PLWC had the 'correct paperwork' and they were 'gonna cut the trees' , that he was told to go there and let PLWC cut the trees even though the Watkins were not at the meeting the night prior (Document 1-10 pages 38, 39), that he refused to look at materials that Mrs. Watkins attempted to show him at the scene to present her side

and told her that her stuff didn't matter(Document 1-10 page 51) and that he had arrested Mrs. Watkins though there was no comment on the arrest tape or in the transcript or in the police report (Document 1-4 page 53, 54, 55, 56, 57,58; Document 1-7 pages 4,5,6), of Mrs. Watkins rushing at anyone or threatening anyone, no mention that Mrs. Watkins was in a safety zone or coned area that she needed to 'get out of' or 'stay out of', no mention of anyone was disturbed by noise and no witness statement of such (Document 1-10 pages 54, 55, 56, 57).

22. Jake testified that he was 'roughly 50, 75 feet' away from the police and that on a number of different occasions Mrs. Watkins went from where the police were to where he was and that all the activities that he alleged took place could have taken place in five minutes (Document 1-10 pages 66 & 67). The impossibility of Crafton's testimony takes on miraculous proportions when at some point the Watkins are allowed to present their evidence to show the physical facts would not permit Mrs. Watkins to negotiate the rough, rutty terrain with tall grass at a high speed after having had knee surgery on one of her bad knees in the fall of 2005 and thereafter not getting along too well (See attached **MED 1 & 2**).

23. The fraud committed by Jake Crafton and Bill McCartney in conspiracy with other agents of Paragould Light and Water Commission to arrange the prosecution of Connie Watkins is explicitly detailed in the Fifth Amended Counterclaim (Document 1-2: pages 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 41 and 42 to name a few.) Evidence is included and referenced on the above pages.

24. Connie Watkins was wrongly convicted and is appealing the conviction. This court can not take a case having no jurisdiction other than fraudulent statements by non removing parties, to wipe out legitimate claims while a judicial process is tying up items of evidence.

WHEREFORE.....fraud has been committed on this court and in light of the abundant evidence produced and promised; the Watkins' substantive arguments and proof justify relief to the point of being permitted a fair trial according to Rule 60; the Watkins should be treated as if some type of liberty and justice still exists and the orders removing guaranteed rights should be overturned for many reasons stated herein and in the previous filings with objections and motions; and relief should be granted according to fairness.

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APPENDIX P

[Doc. No. 39 – Filed on Nov 20 09 by Petitioners]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed November 20, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

COUNTERCLAIMANTS' 1) QUESTIONING OF THE SUFFICIENCY OF THE EVIDENCE SUPPORTING THE FINDINGS 2) MOTION THAT THE COURT AMEND ITS FINDINGS BY SETTING ASIDE ORDERS AGAINST THE COUNTERCLAIMANTS, 3) MOTION FOR STATEMENTS SHOWING BASIS AND 4) CLARIFICATION OF PARTIES SO THAT UPON FILING AN APPEAL OF THE ORDERS IN

DISTRICT COURT, APPELLANTS MAY KNOW WHO THE APPELLEES ARE

Come the counterclaimants Connie Watkins and Richard Watkins, *Pro Se,* 1) questioning the sufficiency of the evidence supporting the findings 2) making a motion that the court amend its findings by setting aside orders against the counterclaimants 3) requesting statements showing basis for the orders and 4) clarification of parties so that upon filing for an appeal of the orders in district court, appellants may know who the appellees are, pursuant to Federal Rules of Civil Procedure Rules 41(a)(2) 52(a)(1), 52(5), 52(6), 52(6)(b), and 52(6)(c), and state:

1. As laid out with proof in Counterclaimants' Fifth Amended Counterclaim, pleadings in Federal court, exhibits attached to pleadings filed in Circuit court and exhibits attached to the counterclaim, all filings in this case by Plaintiff/Counterdefendants are fraudulent filings, and the orders in Federal Court will be appealed by Counterclaimants.

2. Plaintiff/Counterdefendants have intentionally confused party status of all parties involved to the point that the Court has not made clear the parties involved in rulings and orders filed on November 26, 2009 (Doc. No. 27.) and November 6, 2009 (Doc. No. 35).

3. There are 25 counterdefendants in this case, but only 10 removed to federal court, illegitimately in that there were no signatures filed, no jurisdiction was upheld or proven after Counterclaimants' timely filed legitimate, sound, substantiated objections to the removal.

4. Total confusion of parties is due to the misrepresentations by the Plaintiff/ Counterdefendants, as stated with specificity in Doc. Nos. 8, 9, 13, 14, 15, 29 and 31.

5. Judgments were made by this Court on documents filed in state court (Doc. Nos. 5, 6). by parties who did not and could not remove to federal court, who did not notice the 'removing parties' with their motion and/ or did not ask or show valid reason for being deserving of judgment on issues and who did not challenge or rebut valid arguments of the Watkins.

6. Judgments were made that discarded the fifth amended counterclaim without the Watkins being able to be heard or being able to present evidence, or have any briefing on merits, in spite of verified reasoning and the fact that according to case law Watkins' counterclaim held material evidence that should survive any motion to strike or motion to dismiss, especially when the motions did not meet proof with proof.

7. Orders were made against the Watkins when this federal Court had no jurisdiction, when controlling constitutional and statutory provisions prohibited jurisdiction and for which the Court stated no jurisdiction and provided no supporting statutes.

8. Counterclaimants request statement of jurisdiction and statute authorities on which judgments were based that were obtained by fraud practiced against the Watkins.

9. Counterclaimants request statements based on statutes, separating and listing parties who will be

considered 'appellees' and proof from the parties that they have basis for referring to themselves as 'appellees'.

10. Counterclaimants request a fair jury trial, as they had timely requested in federal court (Doc No. 16), on the merits, before the Court expressly disposes of legitimate, substantiated claims against which no opposing evidence has been launched.

11. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

WHEREFORE, Counterclaimants respectfully request that the court amend its findings according to the rules, case law, statutes and sufficiency of the evidence supporting the findings; set aside judgments against the Watkins; grant the Watkins the required constitutional opportunity of a hearing on the merits of their claims; clarify the parties, their positions, filings naming the parties recognized as those who removed to Federal Court and those who have not and the effect of rulings on the motions of each; and extend relief to the Counterclaimants according to the Fifth Amended Counterclaim.

.....

[Doc. No. 40 – Filed on Nov 20 09 by Petitioners]

[Brief in support of Doc. No. 39]

In ruling on a motion to dismiss, the district court must accept the allegations contained in the complaint as true, and all reasonable

inferences from the complaint must be drawn in favor of the non-moving party. *Hafley v. Lohman,* 90 F.3d 264, 266 (8th Cir. 1996). Complaints should be liberally construed in the plaintiff's favor and should not be dismissed for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief." *Rucci v. City of Pacific,* 327 F.3d 651, 652 (8th Cir. 2003) (quoting *Conley v.Gibson,* 355 U.S. 41, 45-46 1957))

Pursuant to Federal Rules of Civil Procedure Rule 41(a)(2), if a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

Pursuant to Federal Rules of Civil Procedure Rule 52(a)(1), in an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

Pursuant to Federal Rules of Civil Procedure Rule 52(5) A party may later question the sufficiency of the evidence supporting the

findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

Pursuant to Federal Rules of Civil Procedure Rule 52(6)(b) on a party's motion filed no later than 10 days after the entry of judgment, the court may amend its findings -- or make additional findings -- and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

According to Federal Rules of Civil Procedure Rule 52(6)(c), if a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

APPENDIX Q

[Doc. No. 33- Filed on Nov 04 09 – by Petitioners]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed November 4, 2009]

CONNIE AND RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

MOTION THAT COUNTERDEFENDANTS BE ORDERED TO CORRECT THE RECORD FILED IN REMOVAL

Come the counterclaimants, Richard and Connie Watkins, pro se.....

2. The parties are confused in this removal..... the original complaint was filed by the City of Paragould, Arkansas by and through Paragould Light and Water

Commission on December 6, 2006 on Richard and Connie Watkins.

3. The original complaint as filed with this Court is incorrect in that the original page 10 was cut from the record and in its place is a spliced page, deleting page 10. The missing describes the lack of criminal activity on the part of Connie Watkins prior to her arrest on November 28, 2006.

4. Counterdefendants filed with the court, documents that contain a false defamatory accounts and description of interaction in allegations of Connie Watkins' behavior on November 28, 2006, such as the October 2, 2008 'Plaintiff's Pre-Trial Information Filing' which in contrast to the 'original complaint', states that Mrs. Watkins "ran at" Crafton Tree Service employees and representatives of the plaintiff".

5. Counterclaimants request an order that Counterdefendants correct the record and supply the Court and the Counterclaimants with the 'true and correct' page 10.

WHEREFORE, the Watkins make their request for an order from the Court that the Counterdefendants correct the record.

.....

APPENDIX R

[Doc. No. 42 - Filed Nov 20 09 by Petitioners]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed November 20, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

COUNTERCLAIMANTS' SUPPLEMENT TO THE RECORD WITH A TRUE AND CORRECT CERTIFIED COPY OF PLAINTIFF'S ORIGINAL COMPLAINT

Come now the counterclaimants Connie Watkins and Richard Watkins, *Pro Se*.....

1. The Plaintiff/Counterdefendants, in filing this case in federal court, supplemented the record with filings from circuit court, but did not submit a true and

correct copy of the original complaint (Document 3-2 page 10) that was served on the Watkins and filed in circuit court on December 6, 2006.

2. The original page ten of the original complaint was removed from the copy submitted to federal court and a spliced page consisting of a repeat of page nine and the 'WHEREFORE' of page ten was deliberately substituted for the actual page ten.

3. Page ten is material, in showing the lack of criminal activity on the part of Connie Watkins that was later claimed by Plaintiff and Paragould Police officers in the misdemeanor criminal trial of Connie Watkins by the same government actors involved in this case.

4. Page ten is material, in showing contradictions of witness testimony with the original complaint and the true sequence of events, as Counterdefendent Kimberly Dale prosecuted and extruded false courtroom testimony, and as Counterdefendants Bill Fisher, Jake Crafton and officers Jaree Johnson and Mike Tinnin gave false testimony under oath to secure the conviction of Connie Watkins in municipal and circuit courts (Document 1-3 pages 4 through 24).

5. Page ten is material, in showing the false allegations of the original complaint when it is compared to the actual police arrest tape recorded by Counterdefendant Jaree Johnson which is included in the Fifth Amended Counterclaim (Document 1-6 pages 53 through 58).

WHEREFORE, a true and correct certified copy of the original 2006 complaint is submitted as **Exhibit A.**

APPENDIX S

[Doc. No. 45 - Filed Nov 25 09 by Petitioners]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

Case No. CIV 3:09-cv-00172

[Filed November 20, 2009]

CONNIE WATKINS AND	)
RICHARD WATKINS	)
DEFENDANTS/COUNTERCLAIMANTS	)
	)
VS.	)
	)
CITY OF PARAGOULD, ARKANSAS; *et al*	)
PLAINTIFFS/COUNTERDEFENDANTS	)
	)

NOTICE OF APPEAL AND
DESIGNATION OF RECORD

Come Richard Watkins and Connie Watkins, pro se, who do hereby give notice that they are filing this Notice of Appeal to the U.S. Court of Appeals for the 8th Circuit from the District Court's orders of October 26, 2009, November 6, 2009 and November 24, 2009 as designated.

The aforementioned October 26, 2009 order (Doc. No. 27) granted motions (Doc. Nos. 5 & 6) filed by parties not joined in removal to federal court, against the Watkins and struck the Watkins valid substantiated fifth amended counterclaim without a hearing or trial and without regard to responses and objections (Doc. Nos. 8, 9, 13) by the Watkins which offered proof that the court lacked jurisdiction, that removal from state court to federal court was fraudulent and that all parties were wrongly aligned by the Plaintiff/Counterdefendants who removed to federal court under false status third-party. The Watkins' statute-based, reasonable arguments (8, 9, 13) were not considered.

The aforementioned November 6, 2009 order (Doc. No. 35) denied the Watkins' Motion for Reconsideration which was based on Rule 46, 51, 52(a)(b) and (c), 53, 59 & 60, and errors by the Court (Doc. No. 29), and denied Watkins' Motion for Ruling on the critical 13 (Doc. No.) objection which was based on Federal Rules of Civil Procedure, Rules 12 and 36 and 28 U.S.C. §§ 1331, 1441(a), 1446(a), and 1447(c) (Doc. No. 31).

The aforementioned November 24, 2009 order (Doc. No. 43) denied the Watkins' Motion to Set Aside the Order due to fraud on the court, pursuant to Federal Rules of Civil Procedure, Rule 60 (Doc. No. 37). The same order, 43, denied the Watkins' motion that the court amend its findings that denied a hearing, and denied Watkins' request for a statement of basis for findings pursuant to Federal Rules of Civil Procedure, Rules 41 and 52, denied clarification and realignment of parties and denied the Watkins the constitutional

opportunity to a hearing on the merits of their counterclaims(Doc. No. 39).

The Watkins designate the complete record which according to F.R.A.P.10(a) is devoid of any transcript that would have been the result of a hearing or trial and is this day devoid of any evidence that would rebut Watkins' allegations, arguments or the proof contained in filings and exhibits that the Watkins made in federal court.

The Watkins certify that there is no transcript to be ordered.

The Watkins have requested of the District Court Clerk that the complete certified record be sent to the U.S. Court of Appeals for the 8th Circuit in the form that is preferred by the court and that the record remain available to the Watkins in the preparation of their appeal brief.

Filed on this 25th day of November 2009.

.....

APPENDIX T

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 09-3811

[Filed January 11, 2010]

CONNIE BURNS WATKINS, ET AL	)
	)
V.	)
	)
CITY OF PARAGOULD, ET AL	)
	)

PETITION FOR REHEARING

Come Richard and Connie Watkins, pro se, for our petition for rehearing and state that we have not had a hearing on the merits of any of the claims in this case, in state or federal court, that our arguments and challenges to the fraud wrought by our adversaries on federal court have not been considered at any point, that federal court's judgments without having jurisdiction were contrary to our rights to have our valid claims against our adversaries heard by a jury and decided on merits of the issues, and that our fifth amended counterclaim which within itself contains proof of the many constitutional violations and state claims was dismissed by the court in favor of parties who had not joined to remove to federal court, that other parties removed to federal court without having

removal power, that the District Court refused to rule on our motions and objections which challenged jurisdiction and proved the adversaries' fraud, that the Court did not support rulings with statute, or law, that the Court's orders were a total disconnect with the facts of our case and party status, and the Watkins further and in support, state:

In April and August of 2006, Paragould Light and Water Commission (PLWC) agent Donis Hamilton contacted Surveyor Bradley P. Hancock, biased Mr. Hancock against Connie Watkins (Doc. #1-7 pp 14-15), and then commissioned Mr. Hancock to re-establish the property stakes on the Watkins' lot that had been in position for the 28 years since Mrs. Watkins had purchased the new lot in 1978. Mr. Hamilton falsely told Mr. Hancock that restraining orders had been placed against Connie Watkins and that the surveys Mr. Hancock was making for PLWC were for 'possible court evidence'. (id) In November 2007 Mr. Hancock removed his stakes and submitted a survey to the Arkansas State Surveyor showing the original, correct boundaries (Doc. #1-2 p 27 and Doc. #1-8 p 31)

On November 16, 2006, PLWC CEO Bill Fisher presented fraudulent defamatory accounts dated November 9, 2006 (Document #1-6 pp 38-45) arranged and composed by PLWC supervisor Bill McCartney and Crafton Tree Service vice president Jake Crafton (Doc. #1-7 pp 48-51) to PLWC attorney Donis Hamilton for the purpose of instigating a lawsuit against Connie Watkins (Document #1- 6 pp 46-47). Mr. Hamilton wrote to Mr. Fisher on November 16, 2006 that 'all the trimming...has been completed and it will be some time before we will need to do anymore [trimming]' and pointed out the lack of a case against Mrs.

Watkins (id). Mr. Fisher agreed to 'take no action' and to 'contact Mr. Hamilton in the future prior to doing any work on Mrs. Watkins' property' (id).

Eleven days later, on November 27, 2006, Bill Fisher met with Mayor Mike Gaskill and Police Chief J.D. Stephenson and biased them against Connie Watkins and solicited them to assist PLWC in illegal action against Connie Watkins and the Watkins' property (Doc. #1-2 p 28). Mike Gaskill and J.D. Stephenson instructed officers to assist the utility company the following morning. (id. pp 28-30 and Doc. #1-10 p 41)

On November 28, 2006, PLWC officials Bill McCartney, Frank Curtis and Crafton Tree Service owners and officials Frank Crafton and Jake Crafton with a large crew of several men and two bucket trucks were escorted to the Watkins' property by male and female Paragould Police officers Mike Tinnin and Jaree Johnson who confronted Richard and Connie Watkins and without allowing discussion of the Watkins' civil rights or due process, arrested me, Connie Watkins, within three minutes of my husband's and my questions and compliance (Doc. #1-6 pp 53-58). PLWC and Crafton Tree Service then viciously and needlessly damaged trees on our property in retaliation for my complaints of damage to my property and for the purpose of violating our civil and property rights.

Bill McCartney sent an email (Doc. #1-7 p 8) to PLWC CEO Bill Fisher and COO Darrell Phillips alleging a situation in contradiction to the arrest tape recording of Jaree Johnson and the police report made

by Mike Tinnin (Doc. #1-6 pp 53-58 and Doc. # 1 7 pp 4-6).

On December 6, 2006, PLWC, the Plaintiff, filed 'the original complaint' against us (Richard and Connie Watkins) seeking an injunction. The complaint falsely alleged (1) that we had 'interfered with line clearance over the years', (2) that we had cursed PLWC employees, (3) that on November 28, 2006 there was a need to trim the Watkins' trees and Connie Watkins had been arrested for 'disorderly conduct', and (4) that it was 'presently impossible for the petitioner, its employees or contractors to safely and properly carry out their duties...in maintenance of...lines' (Doc. # 42). Attached were 'Exhibits' that did not show any wrongdoing on the part of the Watkins and did not support the suit (id).

On July 16, 2007, PLWC CEO Bill Fisher gave false testimony in Municipal Court during my (Connie's) misdemeanor trial, claiming to have 'blanket easement' and stating that PLWC had gone to the Watkins on November 28, 2006 to 'trim trees' and had asked that the police be there to 'observe'. (Doc. #1-9 pp 2-7) Mr. Fisher falsely testified concerning his involvement in a lawsuit with Mrs. Watkins based on PLWC's damage to trees in a different area on her property years prior (id p 6), introduced copies of various surveys and easement descriptions that had nothing to do with our property and relied on the fraudulent survey by Bradley P. Hancock (Doc. #1-2 pp 52-54 and p 65) and a fraudulent easement that Mr. Fisher himself had obtained in April 2006 on property adjacent to ours (Doc. #1-2 p 17). My attorney up to the point of walking into the courtroom had singlemindedly directed me to plead 'nolo contendre'

and had not acquainted himself with the evidence. (id p 52). Officers Jaree Johnson and Mike Tinnin testified in contradiction to Johnson's police tape, Tinnin's police report and other official records (Doc. #1-9 pp 9-37; Doc. #1-6 pp 51-58 and Doc. # 1-7 pp 4-6) Jake Crafton also testified in total contradiction to the recorded account of the few minutes of November 28, 2006 (id; Doc. #1-2 p 62 and Doc. #1-9 pp 45-50).

The prosecution withheld exculpatory evidence from the Court (Doc. #1-2 pp 54-55 and p 65-66) and both Bill Fisher and Donis Hamilton carried statements and/or bias from the courtroom to witnesses under the rule (Doc. # 1-2 p 54 and pp 62-63). The prosecutor attempted to obstruct justice by removing evidence from consideration that the Court had requested while the case was 'under advisement' (Doc. #1-2 p 63).

I was convicted by the false court room testimony of the prosecution's witnesses, not by the official police records (Doc. #1-2 pp 63-64). I, Connie Watkins, appealed to Circuit Court.

I did not waive my right to a jury trial which was docketed, but was given a bench trial (Doc. #1-2 p 82).

I was not permitted to attend a critical stage of my trial in Circuit Court. A quiet pre-trial motion in limine occurred as a deputy barred my attendance. The bench trial judge was biased with many false statements by the prosecutor, Kimberly Dale, who proceeded with great conflict of interest in that the Watkins were in litigation with the city and she was also the City attorney and had worked closely with Donis Hamilton. Dale's statements had no support, but

were not disputed as I was not aware of the content of the hearing until I had been convicted and the record for appeal had been sent by the Greene County Circuit Court to the Arkansas Court of Appeals (Doc. #1-2, pp 79-82).

The case is still in appeal which keeps the 'tampered with' copy of the police tape recording of November 28, 2006 as submitted by the prosecution in municipal (Doc. #1-2 pp 54-55) and circuit courts (Doc. #1-3 pp14-15) as well as the complete recording submitted by Connie Watkins (id) from being available for inspection, and which demonstrates the fact that judgments cannot be made in the civil trial until the conclusion of the appeal process in criminal court and any partial summary judgments affecting our claims of false arrest and malicious prosecution in circuit court, which we followed with interlocutory notice of appeal, are not settled.

City attorney/deputy prosecutor Dale and the prosecuting team including PLWC attorney Donis Hamilton (Doc. #1-3 p 1), suppressed evidence that proved my false arrest (id; Doc. #1-2 pp 68-76 and Doc. #1-3, pp 2-3). City Attorney Dale led Jaree Johnson and Mike Tinnin to give false testimony (Doc. #1-3 pp 4-9) to convict me and to protect the City from our counterclaim and to join PLWC and City employees in the harassment (Doc. #1-3 pp 17-21) and violation of our First, Fourth, Fifth, Sixth, and Fourteenth Amendment rights (Doc. #1-3 pp 58- Doc.#1-5 [Fifth Amended Counterclaim]) as punishment for my exercise of First Amendment rights to criticize PLWC and complain about its damage to my property (Doc #1-6 pp 3-6 and Doc #1-6 pp11-15).

The Circuit Court made clear that no police record convicted me, that my words to the police officers did not convict me (Doc. #1-11 pp 38-40), and that I was convicted by the unsubstantiated court room testimony of Jarce Johnson, Mike Tinnin and Jake Crafton (Doc. #1-3 pp 22-26). A second attorney did not attempt familiarity with evidence and the circumventing circumstances, refused to summon and/or question critical witnesses and refused to expose the prosecution witnesses' transparent malicious intent, fraud and lies.

A. Federal court never had jurisdiction in this case, as removal was defective.

We carefully refuted and proved defective basis and procedure according to removal statutes 28 U.S.C. §§ 1331, 1441(a) and 1446(a)(b) in Doc. No. 13 which was timely filed on October 15, 2009, but which was overlooked by District Court. Also on October 15, 2009, we made a thorough nine-point motion (Doc. # 15) to remand based on defects in removal and lack of jurisdiction and in the 'alternative' made a one-point request to keep our case intact according to §1367. The court treated the motion as a motion to have all claims removed to Federal Court and denied the motion in its October 26th order (Doc. # 27).

The court's removal jurisdiction must be strictly construed and construed against removal *Burns v. Windsor Insurance Company*, 31 F.3d 1092, 1095 (11th Cir. 1994). "[W]here a plaintiff and defendant clash about jurisdiction, uncertainties are resolved in favor of remand." Id.

1. Paragould Light and Water Commission (PLWC), the true Plaintiff, chose the venue of state court for their original complaint against the Watkins, the true defendant, in December 2006. There were no federal issues in the original complaint. (Doc. No. 42) This case did not fit the federal question jurisdiction on the original complaint. There is a requirement that the federal question must appear on the face of a well-pleaded complaint to trigger § 1331 jurisdiction.

2. Our Fourth Amended Counterclaim, also filed pro se, and prior amended counterclaims raised federal issues and claims against PLWC officials and agents and officials and officers of the City of Paragould, but it was not until the same named 'necessary parties' were joined according to F.R.Civ.P. Rule 19 with our September 18, 2009 Fifth Amended Counterclaim, as were parties whose actions had become mature for federal violation claims, that certain counterdefendants sought to remove to federal court based on our counterclaim, approximately three years after the original filing against the Watkins (Doc. Nos. 1, 3, 4). The statutes to be strictly followed do not allow for jurisdiction based on a counterclaim as we showed in Doc. No. 13 with 313 U.S. 100 Shamrock Oil Corporation v. Sheets.

Under the rule of unanimity, ordinarily all defendants must join in a notice of removal or the case will be remanded. Chicago, Rock Island, & Pac. Ry. v. Martin, 178 U.S. 245, 251 (1900); Bradley v. Md. Cas., Co., 382 F.2d 415, 419 (8th Cir.1967)

Sixth Circuit case law interprets the phrase "the defendant" in 28 U.S.C. § 1441(a) as excluding third-party defendants.

B. Fraud was perpetrated on the federal court by the original Plaintiff, Paragould Light and Water Commission (PLWC) and by officials of the City of Paragould, Arkansas and their attorneys. The removal to federal court was fraudulent.

1. Original Plaintiff/counterdefendant Paragould Light and Water Commission did not remove from state to federal court.

2. Plaintiff/counterdefendant City of Paragould did not remove to federal court.

3. Removal was achieved by the ten employees of the City of Paragould who had not been part of the original 'Plaintiff' in the December 2006 original complaint against the Watkins. The ten city employees who removed to federal court, without signatures, were Mike Gaskill, J.D. Stephenson, Todd Stovall, Monty Martin, Mike Tinnin, Jaree Johnson, Phillip Faulkner, Dennis Dunn, Kimberly Dale and Allen Warmath. (Doc. No. 1)

4. Removal of 10 out of 25 counterdefendants left the other 15 to claim to be in whichever court would serve their purpose and to send 'motions that had not succeeded in circuit court' for granting in the District court, which is what happened with Doc. No's 5 and 6.

5. The 'removing ten' made fraudulent unsupported claims of Arkansas Rule 14 'third-party', greatly confusing District Court and all parties. Our Fifth Amended Counterclaim had made clear that F.R.Civ.P. Rule 19 had been used to join necessary parties and no reference was made to 'Rule 14'. The

'removers' had been properly joined by F.R.Civ.P. Rule 19 with service in the our' Fifth Amended Counterclaim.

6. 'Removing city employees' fraudulently claimed to have included in their 'Notice of Removal' a true and correct copy of the original complaint filed in December 2006, but instead, filed a copy wherein page 10 was spliced and manipulated to exclude portions of the true complaint, to deceive the District Court as to violations perpetrated against me in the criminal court trials, if at any time the Court might notice the huge discrepancy in the ' benign, non criminal offense' as described in the original complaint filed a week after my arrest and the wild accusations levied against me (Connie Watkins) in courtroom testimony many months afterwards by the City of Paragould police officers and PLWC agents, when the case had become an important cover-up.

7. Counterdefendant city employees, in their Notice of Removal, misrepresented facts, stating that our Fifth Amended Counterclaim Counts alleging violations of 42 U.S.C. § 1983, 1985, 1986 and 1988 'are within the original jurisdiction of the federal court' and that 28 U.S.C. §§ 1331 and 1441(a) granted them 'original federal question jurisdiction', as they referred to themselves as 'Separate Third Party Defendants' and referred to the Watkins alternately as 'Plaintiffs', 'Defendants' and 'Third Party Plaintiff' (Doc. No. 1).

8. Our objections to 'removal to federal court' and our motion for review of plaintiff's status representation for removal purposes addressed the fraud in our adversaries' 'removal' (Doc. # 13) as did our motion for remand (Doc. # 15).

9. The required investigation and realignment of parties did not take place in federal court and the adversaries did not offer support for their efforts to remove in light of the Watkins' valid proof that removal was fraudulent and defective.

In determining whether to realign parties, we apply the "principal purpose" test: First, we determine the primary issue in controversy, and then we align the parties according to their positions with respect to the primary issue. United States Fid. & Guar. Co. v. A & S Mfg. Co., 48 F.3d 131, 132-33 (4th Cir. 1995). "The determination of the 'primary and controlling matter in dispute' does not include the cross-claims and counterclaims filed by the defendants. Instead, it is to be determined by plaintiff's principal purpose for filing its suit." Zurn Indus., Inc. v. Acton Constr. Co., 847 F.2d 234, 237 (5th Cir. 1988) (emphasis added).

St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283 (1938); *Freeport-McMoRan, Inc. v. KN Energy, Inc.*, 498 U.S. 426, 428 (1991), it is the federal courts' duty to "look beyond the pleadings, and arrange the parties according to their sides in the dispute." *Chase Nat'l Bank*, 314 U.S. at 69. This Court must "work out the relation of each party to the suit according to the nature of his real interest, and *then* decide the question of jurisdiction." *Peters v. Standard Oil Co.*, 174 F.2d 162, 163 (5th Cir. 1949) (emphasis added).

"The burden of establishing federal jurisdiction falls on the party attempting to remove a case from state court." *Golden v. Dodge-Markham Co., Inc.*, 1 F.Supp.1360, 1362 (M.D. Fla. 1998); The removing defendant has the burden of proving the existence of

federal jurisdiction. *Tapscott v. MS Dealer Service Company,* 77 F.3d 1353, 1356 (11th Cir. 1996), abrogated on other grounds. Accordingly, the district court is required to resolve all doubts about federal jurisdiction in favor of remand. *Id. Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)

10. Case law above in stating that the defendant bears the burden of proving subject-matter jurisdiction in removed actions, demonstrates the *confusion of the parties and the lack of understanding in our case... as we, the Watkins, are the 'defendants' for purposes of removal.*

11. State courts may also properly hear section 1983 cases pursuant to the Supremacy Clause of Article VI of the U.S. Constitution. The Supremacy Clause mandates that states must provide hospitable forums for federal claims and the vindication of federal rights, including 42 U.S.C. § 1983, 1985, 1986 and 1988 violations. This point was solidified in the Supreme Court decision of *Felder v. Casey,* 487 U.S. 131, 108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988). Our claims were properly before the State Court.

C. District Court did not consider the facts of this extremely complicated unique case of government against 'we citizens', or the proof previously submitted in the state court record and attached to Watkins' filings in federal court.

1. The Court totally accepted the deceptive filings by the governmental adversaries, even adopting the alleged 'third-party' titles assigned to all parties, in opposition to the record or substantial arguments in motions previously filed by the Watkins in state court.

We (Watkins) filed our response (Doc. # 9) and adequately answered a motion by non-removing parties who had filed their 'motion to strike the fifth amended counterclaim' only in state court (Doc. # 5). PLWC employees Bill Fisher, Darrell Phillips, Bill McCartney, Frank Curtis, John White, Larry Bobbitt, Daniel Wilkerson and Don Wallace did not attempt removal to federal court at any time, and their September 25, 2009 'striking motion' was a generic minimal answer to our Fifth Amended Counterclaim and was included as a supplement to the removal by parties other than the PLWC employees named in this paragraph. For a year, as pro sers, we have kept our first impression, complicated case intact in State court with our pleadings based on facts and truth and case law and our abundance of material evidence. The District Court 'reached down and over' and took an empty motion from state court made by parties who had clearly not removed to federal court and struck our solid fifth amended counterclaim with such a motion in the Court's October 26, 2009 order.

2. Likewise, we had filed a response (Doc. #8) to Plaintiff's motion to strike (Doc. # 6) on September 28, 2009 wherein we had clearly shown the deceptive and baseless nature of Plaintiff's motion, demonstrated fraud by the Plaintiff and had supported our Fifth Amended Counterclaim with its valid claims with Federal Rules of Civil Procedure. Here again, both the motion and response had been filed only in state court and the Plaintiff making the motion to strike had clearly not removed from state to federal court with the separate city employees who are named in the removal notice (Doc. #1), yet District Court reached into state court and granted the baseless motion, striking our upheld fifth amended counterclaim.

3. The District Court accepted statements by any adversary of the Watkins, whether a removing party or not and repeated the false, unsubstantiated and deceptive wording of the adversaries in orders (Doc. #27) against us though we had filed motions and objections supported by case law and documentation in our October 15, 2009 motions (Doc. #'s 13 and 15).

4. This case is government entities and employees versus citizens Richard and Connie Watkins, but was presented to the District Court by government adversaries who confused party status by reversing any normal entrance into federal court and forum shopping.

D. Since there was no jurisdiction, the court should never have made an order affecting the content of this case, especially in light of all the preceding circumstances. The Court should have immediately remanded the entire 'untouched' case back to state court. The Court should never have made an order on this case other than to remand.

1. The District Court made rulings against the Watkins, granting motions of interested parties who did not remove to federal court and who did not ask the District Court to rule on their motions.

2. District Court granted adversaries' motions 5 & 6 on October 26, 2009 (Doc. # 27) even though the filing parties had not removed to federal court and after a stay had been ordered by the Judge on October 12, 2009 for the proceedings in State Court.

3. With the granting of the two motions (Doc. #s 5 & 6) that the Circuit Court had refrained from granting, the Federal Court interfered with justice and in essence reversed State Court rulings, prejudicing citizens who have valid claims against the local government.

4. We have valid constitutional claims in our 'striken Fifth Amended Counterclaim' against Counterdefendants Frank Crafton, Jake Crafton and Crafton Tree Service (Doc. # 22) who did not attempt removal to federal court and who did not file their answers to the Fifth Amended Counterclaim in federal court, valid claims against Bradley Hancock (Doc. #'s 20 & 21) and Randy Philhours who did not remove to federal court as well as the entities PLWC and the City of Paragould and the PLWC employees, none of whom removed to federal court.

5. The District Court abused discretion or plainly erred in granting motions against us and in refusing to rule on critical motions and objections that we filed while the case was in District Court wherein we timely: (1) questioned and refuted federal jurisdiction and supported our arguments with federal removal statutes and case law (Doc. No. 13); (2) requested a ruling on an important Motion/Objection on November 4, 2009 (Doc. # 31); (3) made a motion to reconsider our Doc. #'s 8, 9, 13, 14, 15, 16, 20, 22 and 24 which were all ignored, denied or denied as moot AFTER the Fifth Amended Counterclaim had been stricken by the Court granting motions which were stayed in state court, all with the District Court's October 26, 2009 Order (Doc. # 27); (4) addressed the notes accompanying the Court's October 26, 2009 order, wherein we showed that statute of limitations did not apply to aid in the

striking of our claims, nor did the Rooker-Feldman doctrine, and that the Court's adoption of Plaintiff 'Rule 14' wording did not speak to any part of our counterclaim or to any position or action on our part, and questioned whether the court was left with any findings of fact and what conclusions of law to destroy our fifth amended counterclaim (Doc. # 31); and (5) refuted the adversaries' fraud upon the court with a November 20, 2009 motion to set aside the judgment based on fraud and attached proof of claims and proof of lack of support for adversaries' positions (Doc. # 37).

E. On November 25, 2009, we filed a notice of appeal in District Court. We noticed appealing from three orders....We did not appeal from the remand. We wished to appeal from the October 26, 2009 order (Doc. No. 27), the November 6, 2009 order (Doc. No. 35) and the November 24, 2009 order (Doc. No. 43) as these orders violated our rights to proceed with viable claims involving state and federal issues which were properly before the State Court and for the fact there has been no due process of our claims.

1. The District Court's order on October 26, 2009, mischaracterized our case in stating that *"the Fifth Amended Counterclaim attempts to add claims that appear to have either been previously ruled upon by the Greene County Circuit Court, barred by statute of limitations, or barred by the Rooker-Feldman doctrine."* That summarization by the Court is, in total, contrary to the evidence contained in the record filed in federal court. Not one of our claims has had so much as an evidentiary hearing in any court. No proof was offered by our adversaries to accompany the statement that was so completely accepted and incorporated in the

Court's order. There have been no 'final state court judgments' in our case. We have an appeal in the Arkansas Court of Appeals and had filed an interlocutory appeal in circuit court objecting to the dismissal of claims that would be affected by a successful appeal and we carried over our original claims in those areas in our Fifth Amended Counterclaim to maintain our valid claims and damages, expecting a trial on the merits at some point, as we have not even had an evidentiary hearing.

The *Rooker-Feldman* doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "state-court judgments rendered before the district court proceedings commenced." *Exxon Mobil Corp.* v. *Saudi Basic Industries Corp.*, 544 U. S. 280, 284 (2005)

2. The Circuit court had deemed denied PLWC's latest motions for summary judgment on April 2, 2009 and on September 8, 2009 against us. Our claims withstood when we demonstrated that no form of summary judgment was deserved by the Plaintiff with our September 18, 2009 responses, motions, briefs in support and September 21, 2009 affidavit, but, subsequently PLWC though not joined in the notice to remove to federal court was granted total judgment by the District Court, regardless of our standing in the court and Plaintiff in its many forms (claims of status) had been allowed to slither in and out of state and federal court without the responsibility or consequences of their manipulation of the justice system, to present its claims to disrupt the authority of the State to render justice in federal regardless of removal statutes and without jurisdiction for their actions, and to hide certain individuals and entities

who are not even missed when the court and attorney's do not serve documents on all that were named as parties in Circuit Court. (The certificate of service on Doc. No. 5, Mr. Hamilton representing PLWC employees (no entity) noted only that it was sent to the Watkins.

Jurisdiction should be retained only where jurisdiction is clear. *Id.* The federal district court must remand to the state court any case that was removed improvidently or without necessary jurisdiction. *Glaziers, Glassworkers, Inc. v. Florida Glass & Mirror,* 409 F. Supp. 225, 226 (M.D. Fla. 1996).

3. We are not contesting the remand...we are contesting the damage to our case while it was 'out of state court and wrongly in federal court'. The District court has blocked our right for actions to be compensated for constitutional violations that were perpetrated upon us for the very purpose of violating our rights. Each ruling by the District Court is an error materially prejudicial to our substantial rights and denies us equal protection in favor of conspiratorial governmental interest. Dismissal of claims should not be a substitute for a trial on merits. Even more the dismissal of an entire well supported case.

In City of Waco v. United States Fidelity & Guar. Co., 293 U.S. 140, 143, 55 S.Ct. 6, 7, 79 L.Ed. 244 (1934), the Supreme Court found that the dismissal (but not the remand) was reviewable on appeal.

The Waco doctrine allows us to review district court orders that lead to, but are separate from, orders of

remand and have a conclusive effect upon the ensuing state court action. See, e.g., Beauclerc Lakes Condominium Ass'n v. City of Jacksonville, 115 F.3d 934, 935 (11th Cir.1997) (reviewing dismissal of federal claim that led to remand); Armstrong v. Alabama Power Co., 667 F.2d 1385, 1387 (11th Cir.1982) (relying on Waco to review district court's dismissal of United States as party prior to remand). The Waco doctrine allows us to review a district court's jurisdictional determinations. This distinction exists because the "matter of substantive law exception" and the Waco doctrine apply to different types of orders. The "matter of substantive law exception" applies to the review of a remand order itself, see Glasser, 806 F.2d at 1540 n. 2; see also Regis Assocs. v. Rank Hotels (Management) Ltd., 894 F.2d 193, 194 (6th Cir.1990), that determines the substantive issues of the case in a way that is conclusive because it is unreviewable by the state court.

When a district court enters an order to do something other than remand (such as a dismissal of a claim or a party), and this order changes the contours of the state court action after remand, however, it does not matter whether the issue of law the court decided when it entered the order was jurisdictional or substantive; either way, the parties' rights have been altered in a manner that the state court cannot revisit. See Carr v. American Red Cross, 17 F.3d 671, 675 (3d Cir.1994) (reviewing order of dismissal of defendant that led to remand because "the underlying dismissal order clearly had independent relevance in adjudging the rights of [the] parties.... That is, the ramifications of the dismissal order impacted on more than the issue of federal subject matter jurisdiction alone.").

Under the collateral order doctrine of Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949), we may review a decision that (1) conclusively determines a disputed question that is (2) important and completely separate from the merits of the action and is (3) effectively unreviewable on appeal from a final judgment. See Coopers & Lybrand v. Livesay, 437 U.S. 463, 468, 98 S.Ct. 2454, 2458, 57 L.Ed.2d 351 (1978). A dismissal of a claim or a party prior to remand is such an appealable collateral order, because "if not reversed or set aside it will remain conclusive upon the petitioner," Katsaris v. United States, 684 F.2d 758, 761 (11th Cir.1982)

Section 1447(d) does not allow district courts to insulate separate and severable concurrent orders from review merely by attaching those orders to a remand order. Where the concurrent order of the court is severable from the remand order "in logic and in fact," that order may be reviewable. See City of Waco v. United States Fidelity & Guarantee Co., 293 U.S. 140 (1934); Carr v. American Red Cross, 17 F.3d 671, 674-75 (3d Cir. 1994) ("[W]e have embraced the principle that a district court cannot prevent appellate review of a final collateral order by contemporaneously remanding a case to state court.").

Rather, orders relating to the merits of the underlying action are void if issued without subject matter jurisdiction. See, e.g., Shirley v. Maxicare Texas, Inc., 921 F.2d 565 (5th Cir. 1991) ("Unless a federal court possesses subject matter jurisdiction over a dispute, [ ] any order it makes (other than an order of dismissal or remand) is void.")

Subject matter jurisdiction is not a "nicety of legal metaphysics" but rests instead on "the central principle of a free society that courts have finite bounds of authority." See United States Catholic Conference, 487 U.S. at 77. Courts must be careful to respect these limits on their authority.

WHEREFORE, the Eighth Circuit should direct the District Court to remand this case intact as the Court received it so that we may continue our pursuit of justice in the Courts.

.....

APPENDIX U

HAMILTON, COLBERT & SCURLOCK, LLP
Attorneys at Law
401 West Court Street
P.O. Box 638
Paragould, AR 72451-0638

[October 7, 2009]

Donis B. Hamilton TEL. (870) 236-1500
Roger U. Colbert FAX (870) 236-1592
James V. Scurlock, II***Master of Laws in Taxation**

Via facsimile @ 870-735-1567
(Fax contains __ pages) & Regular Mail
Honorable Victor Hill
Circuit Judge
P.O. Box 768
West Memphis, Arkansas 72303

RE: Paragould Light & Water Commission v. Connie Burns Watkins, et al
Greene Circuit No. CIV-2006-335

Dear Judge Hill:

Last week I called Ms. Whitfield and told her that I thought the attorneys for the elected officials and police officers of the City of Paragould would be removing the above case to Federal District Court. I told Ms. Whitfield I would send her a copy of the notice of removal as soon as I received it.

I have now received a copy of the notice of removal apparently filed on October 2.

In light of this circumstance it appears that the scheduled pretrial in this case on October 13 and the scheduled trial for October 19 through 21 will now nave to be canceled.

With kindest, highest and best personal regards I am,

Very truly yours,

HAMILTON, COLBERT & SCURLOCK, LLP

By: /S/ Donis B. Hamilton
Donis B. Hamilton

DBH: jks
Enclosures: Noted
cc: Mr. and Mrs. Richard Watkins
Mr. Robert L. Beard
Mr. Bill Fisher

APPENDIX V

[see foldout pages]

REENE COUNTY DISTRICT COURT — Arkansas

REENE County — Date: April 26, 2010

Docket #: C-2008-8495

Tracking No.:

Court Date: 10/27/2008 1:30:00 PM — Judgment Date:

ntinued Date: 3/25/2010 — Attorney:

Status: U Continued — Defendant Plea: N

Disposition: JUDGE RECUSED, TOLD MS WATKINS THAT HE IS GOING TO WRITE A LETTER TO THE CHIEF JUSTICE REQUESTING A JUDGE BE APPOINTED TO THIS CASE AND POSSIBLY A DIFFERENT COURT DATE
3/26/2009 TAKEN UNDER ADVISMENT FOR 12 MONTHS, IF SHE MOVES SIGN AWAY FROM HIGHWAY BY 4-10-09 AND IS IN COMPLIANCE WITH CITY ORDINANCE, CHARGE WILL BE DISMISSED AFTER ONE YEAR
WITNESS: ERICK COLEMAN, DENNIS DUNN

efendant Information:

ONNIE T WATKINS — 5404 MARK ST — PARAGOULD AR 72450

DL Number: 432135465 — DLState: AR — SSN: 432-13-5465 — Phone: 870-239-4166

DOB: 6/13/1953 — Race: W — Sex: F — Height: 504 — Weight: 160

ehicle Information:

TagNumber: 880DPC — TagState: AR — Make: DODGE — Model: CARA — Color: BRO

tation Information:

Citation: CTA204277 — Class: C — Offense: O

Agency: PDM PARAGOULD POLICE M — Violation Date: 10/7/2008

Arrest Date: 10/7/2008 — Arrest Number: 20081004

Addl Info:

olation Information:

Violation: VIOLATION OF ZONING ORDINANCE/SETBACK RESTRICTIONS — Statute: 4-4-2

Officer: 804M MARTIN, MONTY

Warrant Num: — Date Issued: — Date Served:

Notice of Suspension: — Notice of Withdrawal:

estitution and Refund Information:

estitution Amt: — Refund Amount:

Check#: — Refund Check#:

stitution Date: — Refund Date:

Restitution To:

ne and Cost Information:

ine Assessed: — Fine Collected: — Rest Collected:

ost Assessed: — Cost Collected: — Receipt #:

Judge:

Advised of Rights: ____ Waived Rights: ____ TimePay Balance: ____

GREENE COUNTY DISTRICT COURT — Arkansas

GREENE County — Date: April 26, 2010

Cost Assessed	Cost Collected:	Receipt #
Misc Assessed	Misc Collected:	Manual Receipt #
Total Assessed	Total Collected:	

CERTIFICATE
STATE OF ARKANSAS
COUNTY OF GREENE
DISTRICT CITY OF PARAGOULD

Robin Moyer, District Court Clerk, do hereby certify that this is a true and
rrect copy of C-08-84[illegible]95
sued Connie Watkins
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April 2010
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STRICT COURT CLERK

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Supreme Court, U.S.
FILED
JUN 9 - 2010
OFFICE OF THE CLERK

No. 09-1384

In The Supreme Court of the United States

CONNIE BURNS WATKINS, RICHARD WATKINS,

Petitioners,

v.

CITY OF PARAGOULD, ARKANSAS, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION

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June 9, 2010

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

The Eighth Circuit Court of Appeals dismissed, for lack of jurisdiction, the petitioners' appeal of a judgment of the U.S. District Court for the Eastern District of Arkansas, striking the petitioner's fifth amended counterclaim and cross-complaint for failure to comply with Rule 14 of the Arkansas Rules of Civil Procedure and Rule 14 of the Federal Rules of Civil Procedure and remanding the case to the Circuit Court of Greene County, Arkansas, Civil Division. The petition here presents no federal question for review by certiorari pursuant to this Court's Rule 10. The order remanding the case to the Circuit Court of Greene County, Arkansas, is not appealable pursuant to 28 USC §1447.

PARTIES TO PROCEEDING

The statement of the parties to the proceedings on pages iv through v of the petition contains the names of all parties remaining in the case.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. STATEMENT OF THE CASE

The original complaint giving rise to this case was filed in the Circuit Court Civil Division of Greene County, Arkansas by the City of Paragould, Arkansas, acting by and through its Paragould Light and Water Commission (an arm of the city created by ordinance to operate the city's utility system). For many years prior to 2006, the Commission had conflicts and confrontations with the petitioners, Connie Burns Watkins and Richard Watkins, her husband, concerning trimming of trees and brush along and adjoining rights-of-way for electrical distribution lines. A final confrontation on November 27, 2006, resulted in the arrest of the petitioner, Connie Burns Watkins, for disorderly conduct, a misdemeanor. [A conviction in the Greene County District Court was appealed de novo to the Circuit Court of Greene County, Criminal Division, resulting in a second conviction which was subsequently appealed and confirmed by the Arkansas Court of Appeals. See *Connie Watkins v. State of Arkansas,* 2010 Ark. App. 85 (Ark. App. 1-27-2010)].

Suit was brought by Paragould Light and Water Commission against the Watkinses to restrain and enjoin them from interfering with, threatening, harassing or physically or verbally abusing the Commission, the Commission's employees or contractors in the maintenance of the right-of-way for

the electrical transmission lines. An answer and four subsequent amended counter-claims were filed by the Watkinses, ultimately resulting in 26 alleged causes of action against the city. On February 17, 2009, the Circuit Court of Greene County granted partial summary judgment on claims of alleged constitutional violations, unlawful arrest, malicious prosecution, excessive force, selective prosecution, defamation and other claims. The Court left surviving allegations of selective enforcement, breach of contract, outrage, trespass, harassment, property damage and excessive force. Trial was scheduled for October 19 through 21, 2009, on the remaining issues.

On September 18, 2009, the petitioners filed a fifth amended counter-claim (and cross-complaint, although they didn't call it that) consisting of approximately 300 pages and for the first time adding as cross-defendants, in their individual capacities, the mayor, chief of police, two captains of the police department, three police officers, the city building inspector and code enforcement officer, two city attorneys, one assistant city attorney and deputy prosecutor, the general manager and CEO of Paragould Light and Water Commission, seven employees of Paragould Light and Water Commission, Crafton Tree Service (a contractor for the Commission), two owners of the tree service and a surveyor.

No motion was filed nor was leave granted to the petitioners here as required by Rule 14 of Arkansas

Rules of Civil Procedure or Rule 14 of the Federal Rules of Civil Procedure (almost identical) to add the additional third party defendants. The Commission and its employees along with the surveyor filed a motion to dismiss the amended counter-claim and cross-complaint for failure to comply with Rule 14. Before further procedures could be taken, the remaining cross defendants removed the case to the U.S. District Court for the Eastern District of Arkansas, Jonesboro Division.

The District Court by order entered October 26, 2009, found that the petitioners here had failed to comply with Rule 14 under either the Arkansas Rules of Civil Procedure or the Federal Rules of Civil Procedure. It further found that if leave had been sought, the request would likely have been denied based on untimeliness, proximity to the trial date, previous court rulings and the fact that several of the new claims appeared to lack merit based on statute of limitations or barred by the *Rooker-Feldman* Doctrine.

The petitioners appealed to the Eighth Circuit Court of Appeals and by order entered December 14, 2009, the Court of Appeals dismissed for lack of jurisdiction. A petition for rehearing *en banc* was denied February 11, 2010.

II. REASONS FOR DENYING THE PETITION

A. AN ORDER REMANDING A CASE TO THE STATE COURT IS NOT REVIEWABLE ON APPEAL UNDER 28 USC §1447(D)

Basically, the U.S. District Court dismissed the petitioners' fifth amended counter-claim and cross-complaint because they failed to comply with the procedural rule requiring a motion by the petitioners and an order authorizing the service of summons on third parties not otherwise previously parties to the case. Rule 14(a) of Arkansas Rules of Civil Procedure, Rule 14(a)(1) Federal Rules of Civil Procedure.

Because the federal issues raised in the fifth amended counter-claim and cross-complaint were thus eliminated, no federal questions remained and the case was remanded to the Greene County Circuit Court. Such an order is not reviewable on appeal under 28 USC §1447(d): " . . . an order remanding a case to the State Court from which it is removed is not reviewable on appeal or otherwise. . . ."

The petitioners here attempt to avoid the application of Rule 14 by saying the Court should realign the parties according to the petitioners' theory of the case. Unfortunately, Rule 14 of both the Arkansas Rules of Civil Procedure and the Federal Rules of Civil Procedure specify not only that third parties can only be brought in after leave of the court, but also governs the alignment of the parties (i.e.: defendants/third party complainants and third party

defendants, etc.). It may be that without counsel, petitioners are unaware that both State and Federal Rules 14 govern the entire third party practice. Therefore, the petitioners attempt to get around the procedural problems and preserve an appeal by realigning of the parties must fail.

The District Court order and a Court of Appeals order are not further appealable.

B. THE DOCTRINES IN *WACO* AND *COHEN* ARE INAPPLICABLE TO THIS CASE

Petitioners urge that the District Court remand and Eighth Circuit affirmance were incorrect under the doctrine of the *City of Waco v. United States Fidelity and Guaranty Company,* 293 U.S. 140, 55 S.Ct. 6, 79 L. Ed. 244 (1934) and the collateral order doctrine of *Cohen v. The Beneficial Industrial Loan Corporation,* 337 U.S. 541, 69 S.Ct. 1221, 93 L. Ed. 1528 (1949).

Waco and its progeny held that where the decree of dismissal substantively preceded the order of remand, the appeal would lie because of adjudication on the substantive issue. In *Cohen* the District Court refused to order the plaintiff in a stockholder's derivative action to post the security for costs as required by a New Jersey statute. The defendant sought immediate review of the question whether the state statute applied to derivative suits in Federal Court. The Supreme Court noted that the purpose of the finality requirement " . . . is to combine in one

review all stages of the proceeding that effectively may be reviewed and corrected if and when final judgment results." Because immediate review of the District Court's order was consistent with that purpose, the court held it appealable as a "final decision" holding that the ruling had "settled conclusively the Corporation's claim that it was entitled by state law to require the shareholder to post security for costs . . . [and] concerned a collateral matter that could not be reviewed effectively on appeal from the final judgment."

Here, the District Court ruled as a procedural matter that when the petitioners filed their third party complaint, they failed to comply with Rule 14 (both under the State Rules of Civil Procedure and the Federal Rules of Civil Procedure) by failing to obtain court approval of a filing of same and therefore the fifth amended counter-claim and cross-complaint should be stricken. No further federal issues remaining, the District Court remanded the case to the State Court for further proceedings. Nothing would prevent the petitioners from attempting to file further pleadings in State Court if they could properly follow the procedures to do so.

In *Powers v. Southland Corporation*, 4 F.3d 223 (3d Cir. 1993) the plaintiffs moved to amend their complaint in order to join an additional defendant whose presence would defeat diversity jurisdiction, after the state's statute of limitations had expired. The District Court granted the plaintiffs' motion and remanded the entire case to the State Court. The

Third Circuit Court of Appeals concluded that the underlying order permitting the plaintiffs to amend their complaint was not final because that order, though unreviewable in Federal Court, would be reviewable by the State Appellate Court on appeal and therefore the "unreviewability" prong of the collateral final order doctrine under *Cohen* was not satisfied. Essentially the same situation is presented here. Petitioners failed to follow the court procedures for filing the fifth amended counter-claim and cross-complaint. In doing so, they rendered the entire process of having filed the cross-complaint and the service of summons thereunder a nullity. Theoretically, petitioners could, if they could follow the procedural rules, revive their claim if it is not otherwise deficient for some reason. There is clearly no portion of a District Court action that has not been remanded and there is no party or cause of action (other than those terminated by previous State Court partial summary judgment orders – not appealed from) which have been prejudicially dismissed in the case.

In *Armstrong v. Alabama Power Company,* 667 F.2d 1385 (11th Cir. 1982) the Court of Appeals had before it, a case where a man and his wife were killed when the mast of their sail boat touched an overhead power line owned by the power company. Suit was brought against the power company. The power company filed a third-party complaint against the United States for its alleged failure to mark the power line on the applicable navigation chart. The third-party complaint was based on the Suits Admiralty Act, 46 USC §741, et seq. The Admiralty

Act provided an exception to the normal United States general sovereign immunity but provided that suits under the act are under the exclusive jurisdiction of the Federal District Court. For some reason, the United States, rather than to seek dismissal of the third-party complaint against it, removed the case to the Federal Court. The District Court ultimately decided that the State Court did not have jurisdiction over the United States and therefore dismissed it from the third-party complaint and then remanded the case to the State Court for further proceedings. In affirming the District Court action, the Court stated:

> We find that the District Court properly dismissed the United States. We reached this conclusion because the derivative nature of removal jurisdiction: the jurisdiction of a Federal Court over a removed case can be no greater than that of the State Court whence the case came; the State Court here had no jurisdiction over the United States because of the Suits Admiralty Act's exclusive federal jurisdiction; therefore, the Federal District Court received no jurisdiction over the United States on removal.

The reasoning in *Armstrong* is applicable here. The petitioners failed to follow Rule 14 by obtaining permission of the State Court to file the fifth amended counter-claim and cross-complaint. Any summonses or further proceedings under that cross-complaint were annulled for failure to obtain the court order approving the same. Therefore, no jurisdiction over

the third-party defendants was acquired. It was in that posture that the case was removed and the District Court found properly that for procedural reasons, the fifth amended counter-claim and cross-complaint should be stricken, which left no federal issues to be adjudicated and therefore remanded the same to State Court. The procedural nature of the actions taken by the District Court renders the order of remand non-appealable.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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June 9, 2010

SUPREME COURT, U.S.
AUG 16 2010
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No. 09-1384

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v.

CITY OF PARAGOULD, ARKANSAS, et al.,

Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

REPLY

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August 16, 2010

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Explanation of reference abbreviations

This Reply refers with the indicated abbreviations, to pages and appendix in the following records: Watkins' petition in this case – U.S. Supreme Court Petition 09-1384 (**Pet.**); Connie Watkins' U.S. Supreme Court Petition Case 10-66 (**U.S.10-66**); Watkins' 5th Amended Counterclaim (**5th am.cc.**); Filings in Federal Court (**Doc. No.**); Greene County Circuit Court Cases (**CIV-2010-103**), an FOIA Case; and, (**CR-2010-211**) a Bill of Pains and Penalties Case.

Reply to Brief in Opposition

I. Every aspect and argument of the opposition brief is fraudulent

A. The brief in opposition misstates the petition arguments in reciting the remover's fraudulent claims which the Courts had adopted as the sole basis for judgments against the Watkins

Opposition, pages 2,3,4,5,6,7,8 and 9 argue a phantom Rule (14), persisting that Petitioners 'failed to comply with the rule in their 5th amended counterclaim', though Watkins, early and often, objected to and addressed opposition's solitary, repetitious fraudulent issue, to show **a)** there was no reason for us to use Rule 14, **b)** we, knowingly, did not use that third-party rule, **c)** we did not need the Court's permission to 'not use a rule that was not to be used', and **d)** therefore 'did not fail to comply' with a rule

not mentioned, and not applied, in our case (**Pet. pgs. 4,5,6,11 and APP.H,L,M,O,P and T**) The rules that we followed are listed on page 2, line 2 of the 5th amended counterclaim, and are clearly stated Federal Rules of Civil Procedure, Rules 12, 13, 15, 17, 18, **19**, and 20. Our summonses were proper.

The fraudulent 'third party' language was created by Plaintiff PLWC attorney Donis Hamilton in his initial response to Watkins' 5th amended counterclaim in state court, which led into federal court. Plaintiff parties depended on the total confusion of party status in the District Court where third-party labels were assigned to all parties, against the pleadings of the Watkins, and though the language is *correctly absent* from the Watkins' 5th amended counterclaim (**Pet.APP.G;** and **Doc.No.1**). Nonetheless, in filing with the U.S. Supreme Court, Watkins were told to style 'Parties to the Proceeding' as it had been in The Eighth Circuit Court of Appeals, so the fraudulence will remain indelibly.

Watkins' established that the individuals named in the 5th amended counterclaim were necessary, indispensable parties within the meaning of Arkansas and Federal Rule of Civil Procedure, **Rule 19**, specifically stating the numerous unadjudicated deliberate, malicious and criminal actions against our rights, *all* carried out by Paragould Light and Water Commission (PLWC) and its agents, including the Paragould Police Department (PPD), on behalf of PLWC, and at PLWC's direction. (**Pet. pg. 6; 5th am.cc.¶¶40-375**). Counterclaims against the parties are laid out in the

5th amended counterclaim, on pages 140-301 (**Doc. No. 1**) and stand untouched with opposition's empty denials.

We Watkins, the only original 'DEFENDANT', have never filed a cross-complaint. All claims are against plaintiff parties, in accordance with Arkansas Rules of Civil Procedure, Rules **13**(a)(c)(d)(e) and (g), **15** ('leave freely given . . . '), and **19** (**Pet. pgs.6 and 20**).

Also contrary to a brief-in-opposition-claim, the petition *did* present federal questions fitting the character of the reasons in U.S. Supreme Court Rule 10(a)(b) and (c), that this Court considers: the U.S. District Court's dismissal of timely challenge to jurisdiction, party status and federal question issue, and total lack of adherence to the removal statute and timely notification of fraud (**Pet. pg.i**); abuse of discretion pertaining to Federal Rules of Civil Procedure (**Id.pg.ii and iii**); and Court's denial of protection of Watkins' Fifth Amendment Due Process right not to be deprived of property and liberty, and other Constitutional rights (**Id.pgs.iii, 71a; APP.T**).

Non-removed, non-original plaintiff Counter-defendants argue in opposition, on page 8 and 9, that it was 'in the posture' of the removers having been joined by annulled summonses to the 5th amended counterclaim that the case was removed, and that the District Court properly struck the 5th amended counterclaim because the summonses had been

annulled [from the start]. This 'known-fraudulent-sole-basis-for-dismissal' must fail.

B. Non-removing *Plaintiff* Paragould Light and Water Commission (PLWC) and its co-party counterdefendants fraudulently argue in opposition

What standing does PLWC Attorney Donis Hamilton have to argue in the U.S. Supreme Court when he *does not represent* the 10 individuals who removed to federal court?

Hamilton states on the cover and page 9 of the Brief in Opposition, *'Counsel of Record'* and *'Attorney for Respondents'*, and further deceptively indicates, with the long-time 'style of the case', that 'City of Paragould', 'Paragould Light and Water Commission' and the PLWC employees listed, are 'Respondents', when, clearly: **a)** no party listed there removed to federal court (**Doc.No.1**-Notice of Removal); **b)** Hamilton does not represent the City of Paragould (**Reply-1a**) or its employees and officials; and **c)** *no document of substitution* has been filed with the lower courts or with this Court, to substitute Donis Hamilton, in place of Robert Beard to represent the ten 'individual' 'city' 'removers' (**Pet. footnote on pg. iv**).

The only 'attorney of record in the removal', Robert Beard, and the ten (10) removing counterdefendants *argue nothing* in opposition. Those ten who removed to federal court, however fraudulently, should be the only to argue in the U.S. Supreme

Court. (**Reply-10a**). Also, contrary to the docket, Watkins' have received no notice of 'Michael Mosley' becoming the 'Counsel of Record' for the City of Paragould.

Hamilton *did not* file a notice of appearance in the U.S. District court, but filed an appearance in the U.S. Court of Appeals *only after* the final decision of the six from which we are appealing. On December 11, 2009, Hamilton entered an appearance 'as Counsel for' PLWC and eight PLWC employees (**Reply-5a**). These are eight (8) of the fourteen (14) non-removing counterdefendants.

Further, there was no *order* by the Court to join PLWC employees to the removal, and no *order* to join plaintiff entities PLWC (original) or City of Paragould, all who 'now argue in opposition'.

We Watkins, do not consider these non-removing counterdefendants to be the respondents, as they lack standing.

C. PLWC attempts to create prejudice through false allegations about the history

The Record shows that PLWC's original 2006 complaint was a malicious red herring and that Hamilton abuses process with known false records and bad faith, in violation of Fed. R. of Civ. P. Rule 11(b) (**Pet. pgs. 56a-57a**) each time he files documents on behalf of PLWC in court, stating, as he does now in this Court, that the Watkins have "interfered"

in any way, "threatening, harassing or physically or verbally abused the commission, its employees or contractors in the maintenance of the right-of-way . . . ". Record shows that, PLWC *does not own* a right-of-way on Watkins' land, that we *have had agreement* with PLWC since 2003 that *Watkins maintain our own* trees (relevant to this case) (**5th am.cc.pg.12¶25 and pg. 16¶39**), our trees were clearly not encroaching the lines on November 28, 2006 (**U.S. 10-66, APP.AD**), and that fraud and forgery (**5th am.cc.pg.118¶312**) have landed wicked accusations against Connie Watkins in a 'special file' housed at PLWC, used to incite illegal government action against Watkins' property and the Watkins (**Id.pgs.18-43, 118¶312**) also (**Pet. pgs.22a-27a**).

PLWC documents, obtained through FOIA, after Connie Watkins' conviction, illustrate PLWC ill-will, hatred, spite and evil intent resulting in hundreds of intentional harmful actions including filing of false reports, defamation, conspiratorial violation of fundamental freedoms and protections of the Fifth Amendment's Due Process and the Fourteenth Amendment's Due Process and Equal Protection Clauses, and that all PLWC allegations were for the purpose of covering those PLWC criminal activities against the Watkins (**5th am.cc. Section D**). The fraud on the court worked by Hamilton involves an unconscionable plan designed to totally obstruct justice, dictate the Courts' decisions, to keep the 'not guilty' Connie Watkins' convicted, and keep Watkins' viable claims from going to a jury trial. (**Pet. pgs. 4-6 and 34-36**). Hamilton tried to dissuade

PLWC CEO Bill Fisher from taking retaliatory action against Connie Watkins less than two weeks before my arrest, because "all the trimming that needs to be done has been completed" (**U.S. 10-66 APP.O**). Fisher agreed, but proceeded to arrange illegal police action against me and the Watkins' property (**Pet. pgs. 24a-28a**). Hamilton then spearheaded the cover-up campaign that included continual crimes against the Watkins' rights. (**Id. 28a-37a**) (**5th am.cc. pgs.48-76**).

The 5th amended counterclaim, pages 6-28, states facts to show the fraudulent nature of PLWC's allegations of 'conflicts and confrontations for many years prior to 2006'. Watkins have based no claims in this case on PLWC actions against Watkins before April 2006, other than *Defamation*. We had no knowledge until January 2008, that PLWC had solicited and collected letters pertaining to Connie Watkins' private life, propounding to 'set a precedent' using PLWC's 1999 damage to Watkins' property (**Id. pgs. 266 and D2**).

The PLWC brief refers to 'a final confrontation', and sets forth the arrest and conviction of Connie Watkins, citing the case in which Appellate Courts adopted the lengthy defamatory spillage of the bench trial judgment, which is in total contradiction to the uncontroverted police recording of my arrest. The case has now been filed, July 7, 2010, in the **U.S. Supreme Court – Petition 10-66** and the *undisputed* defense transcript of the tape (**U.S. 10-66, APP.R**) and corroborating police records time-line

(**Id.APP.S,T and U**) show the complete physical impossibility of the incriminatory testimony by the prosecutor, and witnesses PLWC agent Jake Crafton and two PPD officers (**5th am.cc.pgs.86-105**). The record shows that the mayor and chief of police instructed officers to 'execute a plan' against the Watkins' property (**Id. T-testimony, 282-289**), that the Watkins' trees were not encroaching the utility lines (**U.S. 10-66, APP.AD**), that the Court did not require prosecution to meet the elements of Ark. Code. Ann. §5-71-207 and that there was no probable cause under Ark. R. Crim. P. 4(a)(iii), or Ark. Code. Ann. §16-81-106(c)(1) (Repl.2005) (**U.S.Supr.Ct. P.10-66, pgs. 20-23, APP.R and S**).

Connie Watkins' November 28, 2006 Fourth Amendment violation arrest, prosecution and conviction were designed by PLWC as punishment for First Amendment speech against damage done to our property by the commission's agents (**Id. APP.N and pgs. i-iii**). My conviction was maliciously secured on behalf of PLWC (**5th am.cc.¶223-239, 291**); (**Pet. 09-1384** (this) **pgs.27a-35a; and CIV-2010-103 (FOIA case)**) to damage Watkins' civil case (**5th am.cc.¶¶291-293**) and has criminalized **a)** the act of 'making a list of talking points' in expectation of asking protection from a police officer (**U.S. 10-66, pg. 6; APP.Q**), **b)** protected speech, and according to a dissenting opinion, **c)** 'body language', wherein citizens on private property ask officers to protect their property from government agents (**Id. 20-23**) who are escorted *to* the property by the officers.

PLWC's position was promoted, without PLWC testimony, in the bench trial *de novo* appeal, by City Prosecutor/Deputy State Prosecutor, Kimberly Dale, who in a hearing *which excluded Connie Watkins*, was granted motion in limine, to conceal from the record, exculpatory evidence concerning PLWC (**Pet. pgs.31a-32a; 5th am.cc.**).

In the U.S. Supreme Court, *Hazel-Atlas Glass Co. v. Hartford-Empire Company*, 322 U.S. 238, (1944) an attorney may commit fraud on the court, not only through misrepresentation, but also through omission. Also in *Hazel-Atlas* "it is a wrong. . . . which. . . . cannot complacently be tolerated consistently with the good order of society . . . involv[ing] two victims: the individual litigant . . . and the court itself, whose integrity is compromised by the fraudulent behavior of its officers.) "The very temple of justice is defiled."

D. Opposition Brief misrepresents the current state of the case

PLWC alleges partial summary judgment on February 17, 2009 on certain issues (the actual date of the ORDER was March 3, 2009) pertaining to two 'criminal' cases which were pending at the time of the Order on the *fourth* amended counterclaim. The *non-final* order stated "summary judgment is granted on all 'twenty-six' (26) *except* for the following [seven counts . . .]", yet, there were 'twenty-seven' (27) claims, so it is unknown *which claim* was not

addressed, as the order does not name and specify all of the claims. The ORDER states that Watkins' **surviving claims** are: selective enforcement; breach of contract; outrage; trespass; harassment; property damage and excessive force.

'Unlawful Arrest' was one of the counts granted in the ambiguous order, but during a 'phone conference' called by PLWC on March 4, 2009, the Circuit Court Judge stated pertaining to my arrest, " . . . We will take it up with the jury . . . " (**Reply-3a**). The two 'criminal' cases with complicated *First, Fourth, Fifth, Sixth, Fourteenth Amendment issues, are still pending*.

Further, the March 3rd order, contrary to the brief in opposition, was *not final* as it did not satisfy the requirements of Arkansas and Federal Rules of Civil of Procedure, Rule 54(b), and 'may be revised at any time'.

The March 3, 2009 Order also reversed bifurcation, upon Watkins' motion, in stating that we are *entitled to a trial before a jury* on whether or not PLWC has easement . . . , as well as the issues raised by [the Watkins] in our fourth counterclaim, such as remain. We maintain that all issues raised in our fourth and fifth amended counterclaims should be restored for *trial by a jury* (**5th am.cc. pgs. 140-301**).

At the time of the unjustified, fraudulent removal to federal court, in addition to the 2006 criminal appeal in the Arkansas Court of Appeals (now **U.S. Supreme Court – Petition 10-66**), Petitioners'

pending inextricably interwoven issues were at various stages in various courts with false 'ambiguous charges' of 'ambiguous city ordinance violations' ripening into a bill of attainder (pains and penalties) and unknown issues of secret retaliatory fraudulently filed police reports by the local government, and a ripening case of FOIA denial against the city prosecutor who had prosecuted me in state court. These issues have the same nucleus as my 2006 arrest and baseless complaint filed by PLWC, the same government with the same animus, to perpetuate violation of the petitioners' fundamental rights, even in interfering with contractual rights, denying the right to a trial, and malicious, forceful removal of property without reason or due process, the bill of pains and penalties created and enacted by the actions of all three branches of Paragould city government, in municipal court (**C-08-8495**) against Connie Watkins, in violation of Article I, §10, clause 1 of the Constitution (**5th am.cc.¶¶213,216-218; also pgs.109-118, 120-122,125-127, 129-139**), and perpetuated in the Greene County Circuit Court (**CR-2010-211**) by the same Judge who convicted me against the disorderly conduct statute and without probable cause in U.S. Supreme Court Petition Case 10-66, and who shares the same circuit with Counterdefendant Philhours who became a judge after denying the Watkins due process in the municipal case C-08-8495 (**5th am.cc.¶¶187,189,285,299,302-304 and 308**) is just now being appealed to the Arkansas Supreme Court (**Reply-7a**).

"The touchstone of due process is protection of the individual against arbitrary action of government," *Meachum v. Fano*, 427 U.S. 226 (1976) (internal quotation marks omitted); *Wolff v. McDonnell*, 418 U.S. 558 (1974); *County of Sacramento v. Lewis*, 523 U.S. 833, 845-846 (1998). When government action is so lacking in justification that it "can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense," *Collins v. Harker Heights*, 503 U.S. 115, 128 (1992), it violates the Due Process Clause.

E. Opposition wrongly denies the authority of Waco and Cohen doctrines and 28 U.S.C. §1447, and misapplies additional case law

The opposition's arguments pertaining to review are irrelevant and baseless (**Pet. pgs. 10, 32-35, 59a-64a, and APP.L**) Case law attempting to support opposition's claims, that Watkins' 'failure to follow a rule' resulted in 'no jurisdiction' or rendered 'non-appealable remand', fail to relate. The Dismissal of the 5th amended counterclaim is rendered *null* according to precedent presented in petition.

Our petition demonstrated that the lower courts clearly erred in claiming jurisdiction just long enough to destroy valid issues based on genuine material facts. The Courts cannot legally circumvent the law (28 U.S.C. §§1441(a), (b) and 1446), and this Court's prior decisions would not allow the original plaintiff,

PLWC, to preserve judgment under any lawful theory *OR* the theory of 'third-party' that they have fraudulently effected, as thoroughly argued throughout the petition.

Contrary to opposition position, Watkins had no 'procedural problems' and did not 'fail to comply'. Jurisdiction was never possible and was never achieved, because of lack of federal question in PLWC's initial complaint and defective, fraudulent removal by parties without removal rights. The fraudulent removal confused all issues left in state court and **left the original Plaintiff in state court**, but the Courts allowed PLWC to strike the 5th counterclaim from state court. (**Pet. pgs. 9-10**). Counterdefendants, individuals, and entities, some 'claiming third-party status' and some 'not claiming third-party status', but who committed the same actions against the Watkins, and who were all joined by the same Arkansas and Federal Rule 19, remained in state court and some of those filed documents, none-the-less, in federal court. (**Reply-10a**).

"A decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." 7 Moore's Federal Practice, 2d ed., p. 512, P60.23

Our petition clearly states that what we seek is *the return to state court* our entire 5th amended counterclaim to which are properly joined, the government actors who have committed and are still committing intentional crimes against the Watkins,

for a jury trial on all well-founded issues. Review of the dismissal of federal claims and orders that reflected the fraud that was perpetrated on the Court by non-removers, and orders that ignored petitioners' timely challenges to removal and party status misrepresentation and that refused consideration and ruling on motions and objections that *preceded* remand should be by a Court not biased with the adopted fraud exhibited in the federal court orders.

We need relief and protection from continual government oppression and punishment.

Conclusion

The petition for writ of certiorari should be granted.

Respectfully submitted,

Connie Watkins and
Richard Watkins
5404 Mark St
Paragould, AR 72450
(870) 239-4166

Petitioners pro se

Branch • Thompson
Philhours • Warmath
A PROFESSIONAL ASSOCIATION [LOGO]

414 West Court Street
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ROBERT F. THOMPSON
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ALLEN L. WARMATH*
ROBERT F. THOMPSON III
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ROBERT B. BRANCH
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*Certified Public Accountant

Fax (870) 239-4859
E-mail: btpw@paragouldlawyer.com

December 4, 2007

Attn: Jamie Adams
Arkansas Municipal League
VIA FACSIMILE 501 978-6566

RE: Connie Watkins vs. City of Paragould, Arkansas

Dear Ms. Adams:

Attached is a copy of a Counter-claim against the City of Paragould for False Imprisonment, Malicious Prosecution, Defamation, Outrage, Trespass to Land, etc. Also attached is a copy of a letter from Donis Hamilton, the lawyer handling an easement issue for the Paragould Light & Water Commission against Ms. Watkins. Donis is a private attorney hired by the Commission and does not represent the City.

The City of Paragould requests representation by the Municipal League for the counterclaim. Please

contact Mr. Hamilton to determine when and how the City was served on this matter and for other details of this case.

Thank you for your consideration of this matter.

Sincerely,

/s/ Allen L. Warmath
Allen L. Warmath

ALW/s
CC: Mike Gaskill, Mayor

March 4, 2009 CIV-2006-335(H) – Phone Conference pertaining to an Order in state court – Relevant section

(Persons whose names are highlighted were in attendance) **Judge Hill, Rob Beard** (Municipal League Attorney for the City of Paragould and Mike Gaskill, J.D. Stephenson, Todd Stovall, Monty Martin, Mike Tinnin, Jaree Johnson, Phillip Faulkner, Dennis Dunn, Kimberly Dale, and Allen Warmath), **Donis Hamilton** (attorney for Paragould Light and Water Commission and Bill Fisher, Darrell Phillips, Bill McCartney, Frank Curtis, John White, Larry Bobbitt and Daniel Wilkerson) and **Richard Watkins** and **Connie Watkins**

Hamilton — There isn't any need for further trimming in back of the house [south] at least not until this matter can be scheduled for trial before the jury. Then it would be my suggestion that we not waste the court's time, and the parties' time by having a hearing on a preliminary injunction, and just set the matter for trial to be totally disposed of at the next term, if the Court follows what I'm saying.

Judge — I do . . . Mrs. Watkins?

Connie W. — (Quietly to Richard) Are we ok with this? (Then in answer-) Yes, but I have other questions about the ORDER concerning my counts. Some of my counts are not mentioned. And, what about when the

opposition brings up my arrest? Do I get to address my arrest?

Judge: I don't think the arrest is going to be relevant to the issues that are remaining, is it?

Connie W.: Yes. Yes.

Judge: I think it is. I think it is. I take that back.

Connie W.: The underlying things in my arrest are *very much at issue.*

Judge: I tell you what, we will take it up with the jury then.

Connie W.: Ok.

Judge: Anything else, for today?

Hamilton: Judge, not that I know of, as I understand it, what the court is going to do is in light of the circumstances and after our discussion, is that there will not be any hearing Monday and the Court will set it for trial all the issues to be resolved that remain from the Court's order will be set for trial sometime in the next term. Is that correct?

Judge: Exactly.

PLEASE RETURN FOR FILING
IMMEDIATELY

APPEARANCE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 09-3811

Connie Burns Watkins, et al

VS.

City of Paragould, et al

The Clerk will enter my appearance as Counsel for the following party(s):

(please specify) Paragould Light & Water Commission, Bill Fisher, Darrell Phillips, William (Bill) McCartney, Frank Curtis, Larry Bobbitt, Daniel Wilkerson, Don Wallace

s/ Donis B. Hamilton
ATTORNEY NAME

Hamilton, Colbert & Scurlock, LLP
FIRM NAME

870-236-1500
OFFICE PHONE NUMBER

P.O. Box 638
STREET OR P.O. BOX

870-236-1592
FACSIMILE NUMBER

Paragould, AR 72451-0638
CITY, STATE, ZIP

hamilton@paragould.net
E-MAIL ADDRESS

CERTIFICATE OF SERVICE

☑ I hereby certify that on 12-11-09, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

☑ I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

/s/ Donis B. Hamilton

CIRCUIT COURT OF GREENE COUNTY, ARKANSAS

CRIMINAL DIVISION

STATE OF ARKANSAS PLAINTIFF

vs. CR 2010-211 (DL)

CONNIE WATKINS DEFENDANT

SECOND AMENDED NOTICE OF APPEAL FROM THE APRIL 30, 2010 CIRCUIT COURT JUDGMENT, TO INCLUDE APPEAL FROM THE DENIAL OF MOTION TO CORRECT THE RECORD IN ADDITION TO APPEAL FROM DEEMED DENIAL OF DEFENDANT'S MOTION FOR RELIEF UNDER THE U.S. CONSTITUTION AND RULES 60 AND 61

(Filed Aug. 9, 2010)

Comes, Connie Watkins, Defendant *pro se,* with my second amended notice of appeal from the April 30, 2010 Circuit Court Judgment, to include appeal from the denial of motion to correct the record in addition to appeal from deemed denial of defendant's motion for relief under the U.S. Constitution and Rules 60 and 61, to the Arkansas Supreme Court, appealing from: **A)** the Circuit Court's April 30, 2010 dismissal of my appeal from all three parts of the District Court's March 25, 2010 Order of Dismissal, which: 1) denied me a trial on various charges and arrests dated October 7, 2008 and October 13, 2008, but concluded guilt; 2) stated new charges; 3) ignored my March 15, 2010 motion for a trial, presentation

and objection to the fraud upon the court by prosecution and; 4) found my motion for a trial moot, after dismissing the case; **B)** the 'July 2, 2010, Deemed Denial' of my motion for relief under the U.S. Constitution and Rules 60 and 61; and **C)** the August 3, 2010 Order denying my motion to correct the record and all of its implications against my conduct in stating violation of 'ADMINISTRATIVE ORDER NUMBER 6 of the Arkansas Supreme Court'.

Pursuant to Rules of the Arkansas Supreme Court, Rule 1-2(a)(1.), (7.) and (8.) the Arkansas Supreme Court will properly have jurisdiction of this case as it involves interpretation of the Constitutions of Arkansas and of the U.S., the Defendant has had one case CR-2007-391>CACR-08-1285 decided by the Arkansas Supreme Court, and this present case is required by the law to be heard by the Supreme Court.

The complete record, as stated in the June 1, 2010 notice of appeal, has been designated and will now include the August 2010 filings. Arrangements were made pursuant to Ark. Code Ann. § 16-13-510(c) and the court reporter has been compensated for the inaccurate transcript that was provided.

Dated this 9th day of August 2010.

Respectfully submitted,

CONNIE WATKINS,
Defendant/Appellant pro se

By: /s/ Connie Watkins
Connie Watkins
5404 Mark Street
Paragould, AR 72450
(870) 239-4166

CERTIFICATE OF SERVICE

I, Connie Watkins, have not been notified of any adverse party that is to be noticed, but I am sending a copy to the attorney who stood before the Court against me. I hereby certify that I have mailed a copy of the foregoing Amended Notice of Appeal to the following on this 9th day of August, 2010.

Andrew Fulkerson
333 West Court
Paragould, AR 72450

Office of the Attorney General
Dustin McDaniel
323 Center St, Suite 200
Little Rock, AR 72201

/s/ Connie Watkins
Connie Watkins

Original Plaintiff Paragould Light and Water Commission (PLWC), and Counterdefendants joined by Rule 19 to the 5th Amended Counterclaim on Sept. 18, 2009, as represented by attorneys:

Robert Beard, P.O. Box 38, 301 W. 2nd Street, North Little Rock, AR 72115, for:

> City of Paragould, Arkansas, Mike Gaskill, J.D. Stephenson, Todd Stovall, Monty Martin, Mike Tinnin, Jaree Johnson, Phillip Faulkner, Dennis Dunn, Kimberly Dale and Allen Warmath

M. Keith Wren, 9421 W. Markham St., Ste. B, Little Rock, AR 72205: for Randy Philhours

Donis Hamilton, 401 W. Court, Paragould, AR 72450, for:

> PLWC, Bill Fisher, Darrell Phillips, William McCartney, Frank Curtis, John White, Larry Bobbitt, Daniel Wilkerson and Don Wallace

Bill Stanley, 326 South Church, Jonesboro, AR 72401, for:

> Crafton Tree Service, Jake Crafton and Frank Crafton

Brad Broadaway, 924 W. Court St, Paragould, AR 72450, for: Bradley P. Hancock